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SUPREME COURT

In the Supreme Court of Wisconsin

No. 2024AP_______-OA

JEFFERY A. LEMIEUX and DAVID T. DEVALK,

Petitioners,

v.

TONY EVERS, in his official capacity as Governor of Wisconsin,
SARAH GODLEWSKI, in her official capacity as Secretary of State of Wisconsin, and JILL UNDERLY, in her official capacity as Wisconsin State Superintendent of Public Instruction,

Respondents.

EXHIBITS TO PETITION FOR AN ORIGINAL ACTION

Scott E. Rosenow
Wis. Bar No. 1083736
Nathan J. Kane
Wis. Bar No. 1119329
WMC Litigation Center
501 East Washington Avenue
Madison, Wisconsin 53703
(608) 661-6918
srosenow@wmc.org
nkane@wmc.org

Attorneys for Petitioners

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(c) Multiply the quotient under par. (b) by the total amount appropriated under s. 20.255 (2) (dt) for the current school year.

SECTION 391. 115.367 (2) of the statutes is repealed.

SECTION 392. 115.367 (3) of the statutes is repealed.

SECTION 393. 115.45 (2) (b) of the statutes is amended to read:

115.45 **(2)** (b) From the appropriation under s. 20.255 (2) (dr), the department shall award grants to eligible teams selected from the applicants under par. (a). Grant funds awarded under this section may be applied only towards allowable expenses. The department cannot award ~~more than $5,000~~ to an eligible team more than $6,000 in a school year.

Vetoed In Part

SECTION 394. 118.40 (2r) (e) 2p. a. of the statutes is amended to read:

118.40 **(2r)** (e) 2p. a. Add the amounts appropriated in the current fiscal year under s. 20.255 (2), except s. 20.255 (2) (ac), (aw), (az), ~~(bb),~~ (dj), (du), (fm), (fp), (fq), (fr), (fu), (k), and (m); and s. 20.505 (4) (es); and the amount, as determined by the secretary of administration, of the appropriation under s. 20.505 (4) (s) allocated for payments to telecommunications providers under contracts with school districts and cooperative educational service agencies under s. 16.971 (13).

SECTION 395. 119.46 (1) of the statutes is amended to read:

119.46 **(1)** As part of the budget transmitted annually to the common council under s. 119.16 (8) (b), the board shall report the amount of money required for the ensuing school year to operate all public schools in the city under this chapter, including the schools transferred to the superintendent of schools opportunity schools and partnership program under s. 119.33 and to the opportunity schools and partnership program under subch. II, to repair and keep in order school buildings and equipment, including school buildings and equipment transferred to the superintendent of schools opportunity schools and partnership program under s. 119.33 and to the opportunity schools and partnership program under subch. II, to make material improvements to school property, and to purchase necessary additions to school sites. The report shall specify the amount of net proceeds from the sale or lease of city–owned property used for school purposes deposited in the immediately preceding school year into the school operations fund as specified under s. 119.60 (2m) (c) or (5) and the net proceeds from the sale of an eligible school building deposited in the immediately preceding school year into the school operations fund as specified under s. 119.61 (5). The amount included in the report for the purpose of supporting the Milwaukee Parental Choice Program under s. 119.23 shall be reduced ~~by the amount of aid received by the board under s. 121.136 and~~ by the amount specified in the notice received by the board under s. 121.137 (2).- The common council shall levy and collect a tax upon all the property subject to taxation in the city, which shall be equal to the amount of money required by the board for the purposes set forth in this subsection, at the same time and in the same manner as other taxes are levied and collected. Such taxes shall be in addition to all other taxes which the city is authorized to levy. The taxes so levied and collected, any other funds provided by law and placed at the disposal of the city for the same purposes, and the moneys deposited in the school operations fund under ss. 119.60 (1), (2m) (c), and (5) and 119.61 (5) shall constitute the school operations fund.

Vetoed In Part

SECTION 396. 121.136 of the statutes is repealed.

SECTION 397. 121.58 (2) (a) 4. of the statutes is amended to read:

121.58 **(2)** (a) 4. For each pupil so transported whose residence is more than 12 miles from the school attended, $300 per school year in the 2016–17 school year and $365 for the 2020–21 school year. The amount for ~~each~~ the 2021–22 school year and the 2022–23 school year ~~thereafter~~ is $375. The amount for each school year thereafter is $400.

SECTION 399g. 121.59 (2m) (b) of the statutes is amended to read:

121.59 **(2m)** (b) The sum of all payments under par. (a) may not exceed $200,000 in any fiscal year. If in any school year the amount to which school districts are entitled under par. (a) exceeds $200,000, the state superintendent shall prorate the payments among the eligible school districts. This paragraph cannot apply after June 2023.

Vetoed In Part

SECTION 400. 121.90 (2) (am) 1. of the statutes is amended to read:

121.90 **(2)** (am) 1. Aid under ss. 121.08, 121.09, and 121.105~~, and 121.136~~ and subch. VI, as calculated for the current school year on October 15 under s. 121.15 (4) and including adjustments made under s. 121.15 (4).

SECTION 401g. 121.90 (2) (bm) 3. of the statutes is amended to read:

~~121.90 **(2)** (bm) 3. For the school district operating under ch. 119, aid received under s. 121.136.~~

SECTION 402. 121.905 (3) (c) 9. of the statutes is created to read:

Vetoed In Part

121.905 **(3)** (c) 9. For the limit for the 2023–24 school year and the 2024–25 school year , add $325 to the result under par. (b).

SECTION 403. 121.91 (2m) (j) (intro.) of the statutes is amended to read:

121.91 **(2m)** (j) (intro.) Notwithstanding par. (i) and except as provided in subs. (3), (4), and (8), a school district cannot increase its revenues for the 2020–21 school year, the 2023–24 school year , and the 2024–25 school year to an amount that exceeds the amount calculated as follows:

Vetoed In Part

SECTION 404. 121.91 (2m) (j) 2m. of the statutes is created to read:

Vetoed In Part

121.91 **(2m)** (j) 2m. In the 2023–24 school year and the 2024–25 school year , add $146.

SECTION 405. 121.91 (2m) (j) 3. of the statutes is amended to read:

121.91 **(2m)** (j) 3. Multiply the result under subd. 2. or 2m., whichever is applicable, by the average of the number of pupils enrolled in the current school year and the 2 preceding school years.

SECTION 406. 121.91 (2m) (r) 1. b. of the statutes is amended to read:

121.91 **(2m)** (r) 1. b. Add an amount equal to the amount of revenue increase per pupil allowed under this subsection for the previous school year multiplied by the sum of 1.0 plus the allowable rate of increase under s. 73.0305 expressed as a decimal to the result under subd. 1. a., except that in calculating the limit for the 2013–14 school year and the 2014–15 school year, add $75 to the result under subd. 1. a., in calculating the limit for the 2019–20 school year, add $175 to the result under subd. 1. a., ~~and~~ in calculating the limit for the 2020–21 school year, add $179 to the result under subd. 1. a., and in calculating the limit for the 2023–24 school year and the 2024–25 school year, add $325 to the result under subd. 1. a. In the 2015–16 to 2018–19 school years, the 2021–22 school year, the 2022–23 school year, the 2025–26 school year, and any school year thereafter, make no adjustment to the result under subd. 1. a.

SECTION 407. 121.91 (2m) (s) 1. b. of the statutes is amended to read:

121.91 **(2m)** (s) 1. b. Add an amount equal to the amount of revenue increase per pupil allowed under this subsection for the previous school year multiplied by the sum of 1.0 plus the allowable rate of increase under s. 73.0305 expressed as a decimal to the result under subd. 1. a., except that in calculating the limit for the 2013–14 school year and the 2014–15 school year, add $75 to the result under subd. 1. a., in calculating the limit for the 2019–20 school year, add $175 to the result under subd. 1. a., ~~and~~ in calculating the limit for the 2020–21 school year, add $179 to the result under subd. 1. a., and in calculating the limit for the 2023–24 school year and the 2024–25 school year, add $325 to the result under subd. 1. a. In the 2015–16 to 2018–19 school years, the 2021–22 school year, the 2022–23 school year, the 2025–26 school year, and any school year thereafter, make no adjustment to the result under subd. 1. a.

SECTION 408. 121.91 (2m) (t) 1. (intro.) of the statutes is amended to read:

Vetoed In Part

121.91 **(2m)** (t) 1. (intro.) If 2 or more school districts are consolidated under s. 117.08 or 117.09, in the 2019–20 school year, the consolidated school district's revenue limit shall be determined as provided under par. (im), in the 2020–21 school year, 2023–24 school year , or 2024–25 school year , the consolidated school district's revenue limit shall be determined as provided under par. (j), and in each school year thereafter, the consolidated school district's revenue limit shall be determined as provided under par. (i), except as follows:

SECTION 409. 139.32 (5) of the statutes is amended to read:

139.32 **(5)** Manufacturers, bonded direct marketers, and distributors who are authorized by the department to purchase tax stamps shall receive a discount ~~of 0.8 percent of the tax paid~~ on stamp purchases of 1.25 percent of the tax paid.

SECTION 416. 146.616 (1) (a) of the statutes is amended to read:

146.616 **(1)** (a) "Allied health professional" means any individual who is a health care provider other than a physician, ~~registered nurse,~~ dentist, pharmacist, chiropractor, or podiatrist and who provides diagnostic, technical, therapeutic, or direct patient care and support services to the patient.

SECTION 417. 146.63 (5) of the statutes is amended to read:

146.63 **(5)** TERM OF GRANTS. The department may not distribute a grant under sub. (2) (a) for a term that is more than 5 years to a rural hospital or group of rural hospitals ~~for a term that is more than 3 years~~.

SECTION 418. 146.69 of the statutes is created to read:

146.69 Grants for the Surgical Collaborative of Wisconsin. The department shall award a grant in an amount of $150,000 per fiscal year to the Surgical Collaborative of Wisconsin.

SECTION 419. 146.69 of the statutes, as created by 2023 Wisconsin Act .... (this act), is repealed.

SECTION 420. 165.85 (5y) of the statutes is created to read:

165.85 **(5y)** LAW ENFORCEMENT TRAINING FUND. The moneys credited to the appropriation accounts under s. 20.455 (2) (ja) and (q) constitute the law enforcement training fund.

SECTION 421. 165.937 of the statutes is created to read:

165.937 Grants for protection of elders. (1) The department of justice shall award grants from the appropriation under s. 20.455 (2) (fw) to organizations that promote the protection of elders.

(2) The department of justice shall provide funds from the appropriation under s. 20.455 (2) (fw) to support a statewide elder abuse hotline for persons to anonymously provide tips regarding suspected elder abuse.

SECTION 422. 165.95 (2) of the statutes is amended to read:

165.95 **(2)** The department of justice shall make grants to counties and to tribes to enable them to establish and operate programs, including suspended and deferred prosecution programs and programs based on principles of restorative justice, that provide alternatives to prosecution and incarceration for criminal offenders who abuse alcohol or other drugs. The department of justice shall make the grants from the appropriations under s. 20.455 (2) ~~(ek),~~ (em), (jd), (kn), and (kv). The department of justice shall collaborate with the department of

equal to 40 percent of the summer enrollment in the year 2000 shall be included in the number of pupils enrolled on the 3rd Friday of September 2000; and a number equal to 40 percent of the summer enrollment in the year 2001 shall be included in the number of pupils enrolled on the 3rd Friday of September 2001.

(dm) In determining a school district's revenue limit in the 2002–03 school year, a number equal to 40 percent of the summer enrollment in the year 2000 shall be included in the number of pupils enrolled on the 3rd Friday of September 2000; a number equal to 40 percent of the summer enrollment in the year 2001 shall be included in the number of pupils enrolled on the 3rd Friday of September 2001; and a number equal to 40 percent of the summer enrollment in the year 2002 shall be included in the number of pupils enrolled on the 3rd Friday of September 2002.

(dr) In determining a school district's revenue limit in the 2003–04 school year and in each school year thereafter, a number equal to 40 percent of the summer enrollment shall be included in the number of pupils enrolled on the 3rd Friday of September of each appropriate school year.

(e) In determining a school district's revenue limit for the 2000–01 school year or for any school year thereafter, the department shall calculate the number of pupils enrolled in each school year prior to the 2000–01 school year as the number was calculated in that school year under s. 121.85 (6) (b) 1. and (f), 1997 stats.

(f) In the 2015–16 and 2016–17 school years, the "number of pupils enrolled" shall include a number equal to the sum of the pupils residing in the school district who attend any of the following on the 3rd Friday of September of each appropriate school year:

1. A private school under a scholarship under s. 115.7915.

2. A charter school established under a contract with an entity under s. 118.40 (2r) (b) 1. e. to h.

3. A charter school established under a contract with the director under s. 118.40 (2x).

(g) In the 2017–18 school year and in each school year thereafter, the "number of pupils enrolled" shall include the total number of pupils residing in the school district who on the 3rd Friday of September of each appropriate school year attend a charter school established under a contract with an entity under s. 118.40 (2r) (b) 1. e. to h. or a charter school established under a contract with the director under s. 118.40 (2x).

(1m) "Revenue" means the sum of state aid and the property tax levy.

(2) (am) "State aid" means all of the following:

1. Aid under ss. 121.08, 121.09, 121.105, and 121.136 and subch. VI, as calculated for the current school year on October 15 under s. 121.15 (4) and including adjustments made under s. 121.15 (4).

2. Amounts under ss. 79.095 (4) and 79.096 for the current school year, not including payments received under s. 79.096 (3) for a tax incremental district that has been terminated.

3. All federal moneys received from allocations from the state fiscal stabilization fund that are distributed to school districts as general equalization aid.

4. For the school district operating under ch. 119, the amount received under s. 121.137 (3), as specified in the notice received under s. 121.137 (2).

5. Amounts received in the 2011–12 school year under 2011 Wisconsin Act 32, section 9137 (3q).

(bm) "State aid" excludes all of the following:

1. Any additional aid that a school district receives as a result of ss. 121.07 (6) (e) 1. and (7) (e) 1. and 121.105 (3) for school district consolidations that are effective on or after July 1, 1995, as determined by the department.

2. Any additional aid that a school district receives as a result of s. 121.07 (6) (e) 2. and (7) (e) 2. for school district reorganizations under s. 117.105, as determined by the department.

3. For the school district operating under ch. 119, aid received under s. 121.136.

(3) "Summer enrollment" means the summer average daily membership equivalent for those academic summer classes, interim session classes, and laboratory periods approved for necessary academic purposes under s. 121.14 (1) (a) 1. and 2. and those online classes described in s. 121.14 (1) (a) 3.

History: 1993 a. 16; 1995 a. 27; 1997 a. 27, 113, 237, 286; 1999 a. 9, 32, 186; 2001 a. 109; 2005 a. 225; 2007 a. 20, 200; 2009 a. 28; 2011 a. 32; 2013 a. 20, 257; 2015 a. 55; 2017 a. 36, 59; 2017 a. 364 s. 49; 2021 a. 61.

121.905 Applicability. (1) (a) Except as provided in par. (b), in this section, "revenue ceiling" means $9,100 in the 2017–18 school year, $9,400 in the 2018–19 school year, $9,500 in the 2019–20 school year, $9,600 in the 2020–21 school year, $9,700 in the 2021–22 school year, and $9,800 in the 2022–23 school year and in any subsequent school year.

(b) 1. Except as provided in subd. 3., if a referendum on a resolution adopted by a school board under s. 121.91 (3) (a) was held during the 2015–16, 2016–17, or 2017–18 school year and a majority of those voting rejected the resolution, the school district's "revenue ceiling" is $9,100 in the 3 school years following the school year during which the referendum was held. This subdivision does not apply to a school district if a subsequent referendum is held on a resolution adopted by the school board under s. 121.91 (3) (a) during the 2015–16, 2016–17, 2017–18, or 2018–19 school year and a majority of those voting approved the resolution.

2. Except as provided in subd. 3., if a referendum on a resolution adopted by a school board under s. 121.91 (3) (a) is held during the 2018–19 school year or any school year thereafter and a majority of those voting reject the resolution, for the 3 school years following the school year during which the referendum is held, that school district's "revenue ceiling" is the applicable amount under par. (a) plus the increase under subds. 4. to 7. for the school year during which the referendum is held.

3. If, during the 3–school–year period during which a school district's revenue ceiling is an amount determined under subd. 1. or 2., a referendum on a resolution adopted by the school board under s. 121.91 (3) (a) is held and a majority of those voting approve the resolution, beginning in the school year immediately following the school year during which the referendum is held, the school district's "revenue ceiling" is the amount under par. (a) plus any applicable increase under subds. 4. to 7.

4. In the 2019–20 school year, "revenue ceiling" means the amount under par. (a) for that school year plus $200.

5. In the 2020–21 school year, "revenue ceiling" means the amount under par. (a) for that school year plus $400.

6. In the 2021–22 school year, "revenue ceiling" means the amount under par. (a) for that school year plus $300.

7. In the 2022–23 school year and each subsequent school year, "revenue ceiling" means the amount under par. (a) for that school year plus $200.

8. Notwithstanding subd. 7., "revenue ceiling" means the amount under subd. 7. plus $1,000.

(2) The revenue limit under s. 121.91 does not apply to any school district in any school year in which its base revenue per member, as calculated under sub. (3), is less than its revenue ceiling.

(3) A school district's base revenue per member is determined as follows:

(a) 1. Except as provided under subds. 2. and 3., calculate the sum of the amount of state aid received in the previous school year and property taxes levied for the previous school year, excluding property taxes levied for the purpose of s. 120.13 (19) and excluding funds described under s. 121.91 (4) (c), and the costs of the county children with disabilities education board program, as defined in s. 121.135 (2) (a) 2., in the previous year, for pupils who were school district residents or nonresidents who attended the school district under s. 118.51 and solely enrolled in a special edu-

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cation program provided by the county children with disabilities education board that included the school district in its program under s. 115.817 (2).

2. For a school district created under s. 117.105, for the school year beginning with the effective date of the reorganization, perform the following calculations:

a. Calculate the sum under subd. 1. for each of the school districts from which territory was detached to create the new school district.

b. For each of those school districts, divide the result in subd. 2. a. by the number of pupils enrolled in that school district in the previous school year.

c. For each of those school districts, multiply the result in subd. 2. b. by the number of pupils enrolled in that school district in the previous school year who resided in territory that was detached to create the new school district.

d. Calculate the sum of the amounts determined under subd. 2. c.

3. For a school district from which territory was detached to create a new school district under s. 117.105, for the school year beginning with the effective date of the reorganization, perform the following calculations:

a. Calculate the sum under subd. 1. for each of the school districts from which territory was detached to create the new school district.

b. For each of those school districts, divide the result in subd. 3. a. by the number of pupils enrolled in that school district in the previous school year.

c. For each of those school districts, multiply the result in subd. 3. b. by the number of pupils enrolled in that school district in the previous school year who did not reside in territory that was detached to create the new school district.

(b) 1. Except as provided under subds. 2. and 3., divide the result in par. (a) 1. by the sum of the average of the number of pupils enrolled in the 3 previous school years and the number of pupils enrolled who were school district residents and solely enrolled in a special education program provided by a county children with disabilities education board program in the previous school year.

2. For a school district created under s. 117.105, for the school year beginning with the effective date of the reorganization, divide the result in par. (a) 2. by the number of pupils who in the previous school year were enrolled in a school district from which territory was detached to create the new school district and who resided in the detached territory; for the school year beginning on the first July 1 following the effective date of the reorganization, divide the result in par. (a) 2. by the number of pupils in the previous school year; and for the school year beginning on the 2nd July 1 following the effective date of the reorganization, divide the result in par. (a) 2. by the average of the number of pupils in the 2 previous school years.

3. For a school district from which territory was detached to create a new school district under s. 117.105, for the school year beginning with the effective date of the reorganization, divide the result in par. (a) 3. by the number of pupils who in the previous school year were enrolled in the school district and who did not reside in territory that was detached to create the new school district; for the school year beginning on the first July 1 following the effective date of the reorganization, divide the result in par. (a) 3. by the number of pupils enrolled in the previous school year; and for the school year beginning on the 2nd July 1 following the effective date of the reorganization, divide the result in par. (a) 3. by the average of the number of pupils enrolled in the 2 previous school years.

(c) 2. For the limit for the 1996–97 school year, add $206 to the result under par. (b).

3. For the limit for the 1997–98 school year, add the result under s. 121.91 (2m) (c) 2. to the result under par. (b).

3g. For the limit for the 2009–10 or 2010–11 school year, add $200 to the result under par. (b).

3r. For the limit for the 2011–12 school year, multiply the result under par. (b) by 0.945.

4. For the limit for the 2012–13 school year, add $50 to the result under par. (b).

5. For the limit for the 2013–14 school year and the 2014–15 school year, add $75 to the result under par. (b).

6. For the limit for each of the 2015–16 to 2018–19 school years, for the 2021–22 school year, and for any school year thereafter, make no adjustment to the result under par. (b).

7. For the limit for the 2019–20 school year, add $175 to the result under par. (b).

8. For the limit for the 2020–21 school year, add $179 to the result under par. (b).

9. For the limit for 2023–2425, add $325 to the result under par. (b).

(4) (a) A school district that is exempt from the revenue limits under sub. (2) may not increase its base revenue per member to an amount that is greater than its revenue ceiling.

(b) 1. A school district may increase its revenue ceiling by following the procedures prescribed in s. 121.91 (3).

2. The department shall, under s. 121.91 (4), adjust the revenue ceiling otherwise applicable to a school district under this section as if the revenue ceiling constituted a revenue limit under s. 121.91 (2m).

History: 1995 a. 27; 1997 a. 27, 113, 164, 286; 1999 a. 9, 32; 2001 a. 16; 2003 a. 33; 2005 a. 25, 219; 2007 a. 20; 2009 a. 28; 2011 a. 32; 2013 a. 20; 2017 a. 141; 2019 a. 9; 2021 a. 58; 2023 a. 11, 19.

121.91 Revenue limit. (2m) (a) Except as provided in subs. (3) and (4), no school district may increase its revenues for the 1995–96 school year to an amount that exceeds the amount calculated as follows:

1. Divide the sum of the amount of state aid received in the previous school year and property taxes levied for the previous school year, excluding funds described under sub. (4) (c), by the average of the number of pupils in the 3 previous school years.

3. Add $200 to the result under subd. 1.

4. Multiply the result under subd. 3. by the average of the number of pupils in the current and the 2 preceding school years.

(b) Except as provided in subs. (3) and (4), no school district may increase its revenues for the 1996–97 school year to an amount that exceeds the amount calculated as follows:

1. Divide the sum of the amount of state aid received in the previous school year and property taxes levied for the previous school year, excluding funds described under sub. (4) (c), by the average of the number of pupils in the 3 previous school years.

2. Add $206 to the result under subd. 1.

3. Multiply the result under subd. 2. by the average of the number of pupils in the current and the 2 preceding school years.

(c) Except as provided in subs. (3), (4) and (6), no school district may increase its revenues for the 1997–98 school year to an amount that exceeds the amount calculated as follows:

1. Divide the sum of the amount of state aid received in the previous school year and property taxes levied for the previous school year, excluding funds described under sub. (4) (c), by a number calculated by adding the number of pupils enrolled in the 3 previous school years, subtracting from that total the number of pupils attending private schools under s. 119.23 in the 4th, 3rd and 2nd preceding school years, and dividing the remainder by 3.

2. Multiply $206 by 1.0.

3. Add the result under subd. 1. to the result under subd. 2.

4. Multiply the result under subd. 3. by a number calculated by adding the number of pupils enrolled in the current and the 2 preceding school years, subtracting from that total the number of pupils attending private schools under s. 119.23 in the 3 previous school years, and dividing the remainder by 3.

(d) Except as provided in subs. (3) and (4), no school district may increase its revenues for the 1998−99 school year to an amount that exceeds the amount calculated as follows:

1. Divide the sum of the amount of state aid received in the previous school year and property taxes levied for the previous school year, excluding funds described under sub. (4) (c), by a number calculated by adding the number of pupils enrolled in the 3 previous school years, subtracting from that total the number of pupils attending charter schools under s. 118.40 (2r) and private schools under s. 119.23 in the 4th, 3rd and 2nd preceding school years and dividing the remainder by 3.

2. Multiply the amount of the revenue increase per pupil allowed under this subsection for the previous school year by the sum of 1.0 plus the allowable rate of increase under s. 73.0305 expressed as a decimal.

3. Add the result under subd. 1. to the result under subd. 2.

4. Multiply the result under subd. 3. by a number calculated by adding the number of pupils enrolled in the current and the 2 preceding school years, subtracting from that total the number of pupils attending charter schools under s. 118.40 (2r) and private schools under s. 119.23 in the 3 previous school years and dividing the remainder by 3.

(e) Except as provided in subs. (3), (4), and (8), no school district may increase its revenues for the 2008−09 school year to an amount that exceeds the amount calculated as follows:

1. Divide the sum of the amount of state aid received in the previous school year and property taxes levied for the previous school year, excluding property taxes levied for the purpose of s. 120.13 (19) and excluding funds described under sub. (4) (c), by the average of the number of pupils enrolled in the 3 previous school years.

2. Multiply the amount of the revenue increase per pupil allowed under this subsection for the previous school year by the sum of 1.0 plus the allowable rate of increase under s. 73.0305 expressed as a decimal.

3. Add the result under subd. 1. to the result under subd. 2.

4. Multiply the result under subd. 3. by the average of the number of pupils enrolled in the current and the 2 preceding school years.

(f) Except as provided in subs. (3), (4), and (8), no school district may increase its revenues for the 2009−10 school year or for the 2010−11 school year to an amount that exceeds the amount calculated as follows:

1. Divide the sum of the amount of state aid received in the previous school year and property taxes levied for the previous school year, excluding property taxes levied for the purpose of s. 120.13 (19) and excluding funds described under sub. (4) (c), by the average of the number of pupils enrolled in the 3 previous school years.

2. Add $200 to the result under subd. 1.

3. Multiply the result under subd. 2. by the average of the number of pupils enrolled in the current and the 2 preceding school years.

(g) Except as provided in subs. (3), (4), and (8), no school district may increase its revenues for the 2011−12 school year to an amount that exceeds the amount calculated as follows:

1. Divide the sum of the amount of state aid received in the previous school year and property taxes levied for the previous school year, excluding property taxes levied for the purpose of s. 120.13 (19) and excluding funds described under sub. (4) (c), by the average of the number of pupils enrolled in the 3 previous school years.

3. Multiply the result under subd. 1. by the average of the number of pupils enrolled in the current and the 2 preceding school years.

4. Multiply the result under subd. 3. by 0.055.

5. Subtract the product under subd. 4. from the result under subd. 3.

(h) Except as provided in subs. (3), (4), and (8), no school district may increase its revenues for the 2012−13 school year to an amount that exceeds the amount calculated as follows:

1. Divide the sum of the amount of state aid received in the previous school year and property taxes levied for the previous school year, excluding property taxes levied for the purpose of s. 120.13 (19) and excluding funds described under sub. (4) (c), by the average of the number of pupils enrolled in the 3 previous school years.

3. Add $50 to the result under subd. 1.

4. Multiply the result under subd. 3. by the average of the number of pupils enrolled in the current and the 2 preceding school years.

(hm) Except as provided in subs. (3), (4), and (8), no school district may increase its revenues for the 2013−14 school year or for the 2014−15 school year to an amount that exceeds the amount calculated as follows:

1. Divide the sum of the amount of state aid received in the previous school year and property taxes levied for the previous school year, excluding property taxes levied for the purpose of s. 120.13 (19) and excluding funds described under sub. (4) (c), by the average of the number of pupils enrolled in the 3 previous school years.

2. Add $75 to the result under subd. 1.

3. Multiply the result under subd. 2. by the average of the number of pupils enrolled in the current school year and the 2 preceding school years.

(i) Except as provided in subs. (3), (4), and (8), no school district may increase its revenues for the 2015−16 school year or for any school year thereafter to an amount that exceeds the amount calculated as follows:

1. Divide the sum of the amount of state aid received in the previous school year and property taxes levied for the previous school year, excluding property taxes levied for the purpose of s. 120.13 (19) and excluding funds described under sub. (4) (c), by the average of the number of pupils enrolled in the 3 previous school years.

2. Multiply the result under subd. 1. by the average of the number of pupils enrolled in the current and the 2 preceding school years.

(im) Notwithstanding par. (i) and except as provided in subs. (3), (4), and (8), a school district cannot increase its revenues for the 2019−20 school year to an amount that exceeds the amount calculated as follows:

1. Divide the sum of the amount of state aid received in the previous school year and property taxes levied for the previous school year, excluding property taxes levied for the purpose of s. 120.13 (19) and excluding funds described under sub. (4) (c), by the average of the number of pupils enrolled in the 3 previous school years.

2. Add $175.

3. Multiply the result under subd. 2. by the average of the number of pupils enrolled in the current school year and the 2 preceding school years.

(j) Notwithstanding par. (i) and except as provided in subs. (3), (4), and (8), a school district cannot increase its revenues for the 2020−21 school year−year 2425 to an amount that exceeds the amount calculated as follows:

1. Divide the sum of the amount of state aid received in the previous school year and property taxes levied for the previous school year, excluding property taxes levied for the purpose of s. 120.13 (19) and excluding funds described under sub. (4) (c), by the average of the number of pupils enrolled in the 3 previous school years.

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2. Add $179.

2m. In 2023–2425, add $146.

3. Multiply the result under subd. 2. or 2m., whichever is applicable, by the average of the number of pupils enrolled in the current school year and the 2 preceding school years.

(r) 1. Notwithstanding pars. (i) to (j), if a school district is created under s. 117.105, its revenue limit under this section for the school year beginning with the effective date of the reorganization shall be determined as follows except as provided under subs. (3) and (4):

a. Divide the result under s. 121.905 (3) (a) 2. by the total number of pupils who in the previous school year were enrolled in a school district from which territory was detached to create the new school district and who resided in the detached territory.

b. Add an amount equal to the amount of revenue increase per pupil allowed under this subsection for the previous school year multiplied by the sum of 1.0 plus the allowable rate of increase under s. 73.0305 expressed as a decimal to the result under subd. 1. a., except that in calculating the limit for the 2013–14 school year and the 2014–15 school year, add $75 to the result under subd. 1. a., in calculating the limit for the 2019–20 school year, add $175 to the result under subd. 1. a., in calculating the limit for the 2020–21 school year, add $179 to the result under subd. 1. a., and in calculating the limit for the 2023–24 school year and the 2024–25 school year, add $325 to the result under subd. 1. a. In the 2015–16 to 2018–19 school years, the 2021–22 school year, the 2022–23 school year, the 2025–26 school year, and any school year thereafter, make no adjustment to the result under subd. 1. a.

c. Multiply the result under subd. 1. b. by the number of pupils who in the previous school year were enrolled in a school district from which territory was detached to create the new school district and who resided in the detached territory, or by the number of pupils enrolled in the new school district in the current school year, whichever is greater.

2. If a school district is created under s. 117.105, the following adjustments to the calculations under pars. (i) to (j) apply for the 2 school years beginning on the July 1 following the effective date of the reorganization:

a. For the school year beginning on the first July 1 following the effective date of the reorganization the number of pupils in the previous school year shall be used under pars. (i) 1., (im) 1. and (j) 1. instead of the average of the number of pupils in the 3 previous school years, and for the school year beginning on the 2nd July 1 following the effective date of the reorganization the average of the number of pupils in the 2 previous school years shall be used under pars. (i) 1., (im) 1. and (j) 1. instead of the average of the number of pupils in the 3 previous school years.

b. For the school year beginning on the first July 1 following the effective date of the reorganization the average of the number of pupils in the current and the previous school years shall be used under pars. (i) 2. and (j) 3. instead of the average of the number of pupils in the current and the 2 preceding school years.

(s) 1. Notwithstanding pars. (i) to (j), if territory is detached from a school district to create a new school district under s. 117.105, the revenue limit under this section of the school district from which territory is detached for the school year beginning with the effective date of the reorganization shall be determined as follows except as provided in subs. (3) and (4):

a. Divide the result under s. 121.905 (3) (a) 3. by the number of pupils who in the previous school year were enrolled in the school district and who did not reside in territory that was detached to create the new school district.

b. Add an amount equal to the amount of revenue increase per pupil allowed under this subsection for the previous school year multiplied by the sum of 1.0 plus the allowable rate of increase under s. 73.0305 expressed as a decimal to the result under subd. 1. a., except that in calculating the limit for the 2013–14 school year and the 2014–15 school year, add $75 to the result under subd. 1. a., in calculating the limit for the 2019–20 school year, add $175 to the result under subd. 1. a., in calculating the limit for the 2020–21 school year, add $179 to the result under subd. 1. a., and in calculating the limit for the 2023–24 school year and the 2024–25 school year, add $325 to the result under subd. 1. a. In the 2015–16 to 2018–19 school years, the 2021–22 school year, the 2022–23 school year, the 2025–26 school year, and any school year thereafter, make no adjustment to the result under subd. 1. a.

c. Multiply the result under subd. 1. b. by the number of pupils who in the previous school year were enrolled in the school district and who did not reside in the detached territory, or by the number of pupils enrolled in the school district in the current school year, whichever is greater.

2. If territory is detached from a school district to create a new school district under s. 117.105, the following adjustments to the calculations under pars. (i) to (j) apply to the school district from which territory is detached for the 2 school years beginning on the July 1 following the effective date of the reorganization:

a. For the school year beginning on the first July 1 following the effective date of the reorganization, the number of pupils in the previous school year shall be used under pars. (i) 1., (im) 1., and (j) 1. instead of the average of the number of pupils in the 3 previous school years; and for the school year beginning on the 2nd July 1 following the effective date of the reorganization, the average of the number of pupils in the 2 previous school years shall be used under pars. (i) 1., (im) 1., and (j) 1. instead of the average of the number of pupils in the 3 previous school years.

b. For the school year beginning on the first July 1 following the effective date of the reorganization the average of the number of pupils in the current and the previous school year shall be used under pars. (i) 2. and (j) 3. instead of the average of the number of pupils in the current and the 2 preceding school years.

(t) 1. If 2 or more school districts are consolidated under s. 117.08 or 117.09, in the 2019–20 school year, the consolidated school district's revenue limit shall be determined as provided under par. (im), in the 2020–21 school year, 2023–year 2425, the consolidated school district's revenue limit shall be determined as provided under par. (j), and in each school year thereafter, the consolidated school district's revenue limit shall be determined as provided under par. (i), except as follows:

a. For the school year beginning with the effective date of the consolidation, the state aid received in the previous school year by the consolidated school district is the sum of the state aid amounts received in the previous school year by all of the affected school districts.

b. For the school year beginning with the effective date of the consolidation, the property taxes levied for the previous school year for the consolidated school district is the sum of the property taxes levied for the previous school year by all of the affected school districts.

c. For the school year beginning with the effective date of the consolidation and the 2 succeeding school years, the number of pupils enrolled in the consolidated school district in any school year previous to the effective date of the consolidation is the sum of the number of pupils enrolled in all of the affected school districts in that school year.

2. If 2 or more school districts are consolidated under s. 117.08 or 117.09, and an excess revenue has been approved under sub. (3) for one or more of the affected school districts for school years beginning on or after the effective date of the consolidation, the approval for those school years expires on the effective date of the consolidation.

(3) (a) 1. If a school board wishes to exceed the limit under sub. (2m) otherwise applicable to the school district in any school year, it shall promptly adopt a resolution supporting inclusion in the final school district budget of an amount equal to the proposed excess revenue. The resolution shall specify whether the proposed excess revenue is for a recurring or nonrecurring purpose, or, if the proposed excess revenue is for both recurring and nonrecurring purposes, the amount of the proposed excess revenue for

A. INVESTING IN WHAT'S BEST FOR KIDS

1. Per Pupil Revenue Limit Adjustment

Sections 402, 403, 404, and 408

These sections provide the formula resulting in per pupil revenue limit adjustments of $325 in fiscal year 2023-24 and fiscal year 2024-25 for public school districts.

I am partially vetoing sections 402, 403, 404, and 408 to provide a $325 per pupil revenue limit adjustment in each year from 2023 through 2425. I object to the failure of the Legislature to address the long-term financial needs of school districts. This veto makes no changes to the per pupil revenue limit adjustment provided in the 2023-24 and 2024-25 school years and provides school districts with predictable long-term spending authority increases.

I have repeatedly recommended restoring the inflationary indexing of the per pupil revenue limit adjustment, which was in place prior to fiscal year 2009-10. Providing increased and continuing resources to school districts through the per pupil revenue limit adjustment, as recommended by the Legislature's 2019 Blue Ribbon Commission on School Funding, should be something all Wisconsinites can support.

I have often said that what is best for our kids is what is best for our state. As a result of this veto, I am requesting the Department of Public Instruction provide and account for this per pupil revenue limit adjustment authority of $179 plus $146 for a total of $325 in each year from 2023-24 until 2425.

2. High Poverty Aid

Sections 67, 394, 395, 396, 400, 401g, and 9334

These sections repeal and remove funding from the existing aid for the high poverty school districts appropriation under s. 20.255 (2) (bb). School districts are eligible for this aid if at least half of their enrollment meets the income criteria for a free and reduced-price lunch in the federal school lunch program.

I am vetoing these sections to retain the appropriation that exists under current law in s. 20.255 (2) (bb) with zero dollars, and to retain the statutory references to high poverty aid. I object to eliminating this aid program without also providing sufficient increases in general equalization aid. The Legislature has chosen to provide greater investment in the school levy tax credit than general equalization aid in this budget. This is a less equitable funding model for school district costs and is in direct conflict with recommendations by the Legislature's 2019 Blue Ribbon Commission on School Funding. Through this veto, I am retaining the appropriation so that the state has a clear pathway to support high poverty school districts.

PUBLIC INSTRUCTION AND CHILD CARE

ITEM A-1. PER PUPIL REVENUE LIMIT ADJUSTMENT

As passed by the Legislature, Senate Bill 70 would have set the per pupil adjustment under revenue limits at $325 in 2023-24 and 2024-25, and there would have been no per pupil adjustment in 2025-26 and each year thereafter. ***The Governor's partial veto modified the language of the per pupil adjustment that set the $325 amount "in the 2023-24 school year and the 2024-25 school year" by deleting words and digits to instead set the $325 amount "in 2023-2425."***

[Act 19 Vetoed Sections: 402 thru 404 and 408]

ITEM A-2. HIGH POVERTY AID

As passed by the Legislature, Senate Bill 70 deleted $16,830,000 GPR annually and the appropriation and program statutes for high poverty aid. ***The Governor's partial veto deletes the repeal of the appropriation and program statutes for high poverty aid. However, under Act 19 as vetoed, no funding is provided for this aid, as a veto cannot restore funding removed by previous legislative action***.

[Act 19 Vetoed Sections: 67, 394 thru 396, 400, 401g, and 9334]

ITEM A-3 LAKELAND STAR ACADEMY

Chg. to Enr. SB 70	
GPR	- $750,000

As passed by the Legislature, Senate Bill 70 would have provided $250,000 in 2023-24 and $500,000 in 2024-25 in a newly-created annual appropriation for grants to the Lakeland STAR Academy. The Department of Public Instruction (DPI) would have been required to provide a grant equal to the amount appropriated in each year to the Lakeland UHS School District for the Lakeland STAR Academy, a charter school authorized by the district. The appropriation would have been repealed on July 1, 2025. ***The Governor's partial veto deletes these provisions.***

[Act 19 Vetoed Sections: 51 (as it relates to s. 20.255(2)(ag)), 65, 66, 9134, and 9434]

ITEM A-4 ONLINE EARLY LEARNING PILOT PROGRAM

Chg. to Enr. SB 70	
GPR	- $1,000,000

As passed by the Legislature, Senate Bill 70 would have modified the nonstatutory language that created the Online Early Learning Pilot Program under 2019 Act 170 to specify that the repeal of the appropriation for the program would take effect on July 1, 2027, rather than July 1, 2023. Language requiring a contract for a service provider to administer the program from July 1, 2020, to June 30, 2023, and language referring to the three years of the contract would have been deleted. Senate Bill 70 would have retained the appropriation for the program at $500,000 GPR annually. ***The Governor's partial veto deletes***

commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve, with his reasons for granting the same.

Lieutenant governor, when governor. SECTION 7. [*As amended April 1979*] **(1)** Upon the governor's death, resignation or removal from office, the lieutenant governor shall become governor for the balance of the unexpired term.

(2) If the governor is absent from this state, impeached, or from mental or physical disease, becomes incapable of performing the duties of the office, the lieutenant governor shall serve as acting governor for the balance of the unexpired term or until the governor returns, the disability ceases or the impeachment is vacated. But when the governor, with the consent of the legislature, shall be out of this state in time of war at the head of the state's military force, the governor shall continue as commander in chief of the military force. [*1977 J.R. 32, 1979 J.R. 3, vote April 1979*]

Secretary of state, when governor. SECTION 8. [*As amended April 1979*] **(1)** If there is a vacancy in the office of lieutenant governor and the governor dies, resigns or is removed from office, the secretary of state shall become governor for the balance of the unexpired term.

(2) If there is a vacancy in the office of lieutenant governor and the governor is absent from this state, impeached, or from mental or physical disease becomes incapable of performing the duties of the office, the secretary of state shall serve as acting governor for the balance of the unexpired term or until the governor returns, the disability ceases or the impeachment is vacated. [*1977 J.R. 32, 1979 J.R. 3, vote April 1979*]

Compensation of lieutenant governor. SECTION 9. [*Amended Nov. 1869; repealed Nov. 1932; see 1868 J.R. 9, 1869 J.R. 2, 1869 c. 186, vote Nov. 1869; 1929 J.R. 70, 1931 J.R. 53, vote Nov. 1932.*]

Governor to approve or veto bills; proceedings on veto. SECTION 10. [*As amended Nov. 1908, Nov. 1930, April 1990, and April 2008*] **(1)** (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.

(2) (a) If the governor rejects the bill, the governor shall return the bill, together with the objections in writing, to the house in which the bill originated. The house of origin shall enter the objections at large upon the journal and proceed to reconsider the bill. If, after such reconsideration, two–thirds of the members present agree to pass the bill notwithstanding the objections of the governor, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two–thirds of the members present it shall become law.

(b) The rejected part of an appropriation bill, together with the governor's objections in writing, shall be returned to the house in which the bill originated. The house of origin shall enter the objections at large upon the journal and proceed to reconsider the rejected part of the appropriation bill. If, after such reconsideration, two–thirds of the members present agree to approve the rejected part notwithstanding the objections of the governor, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two–thirds of the members present the rejected part shall become law.

(c) In all such cases the votes of both houses shall be determined by ayes and noes, and the names of the members voting for or against passage of the bill or the rejected part of the bill notwithstanding the objections of the governor shall be entered on the journal of each house respectively.

(3) Any bill not returned by the governor within 6 days (Sundays excepted) 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. [*1905 J.R. 14, 1907 J.R. 13, 1907 c. 661, vote Nov. 1908; 1927 J.R. 37, 1929 J.R. 43, vote Nov. 1930; 1987 J.R. 76, 1989 J.R. 39, vote April 1990; 2005 J.R. 46, 2007 J.R. 26, vote April 2008*]

ARTICLE VI.

ADMINISTRATIVE

Election of secretary of state, treasurer and attorney general; term. SECTION 1. [*As amended April 1979*] The qualified electors of this state, at the times and places of choosing the members of the legislature, shall in 1970 and every 4 years thereafter elect a secretary of state, treasurer and attorney general who shall hold their offices for 4 years. [*1977 J.R. 32, 1979 J.R. 3, vote April 1979*]

Secretary of state; 4–year term. SECTION 1m. [*Created April 1967; repealed April 1979; see 1965 J.R. 80, 1967 J.R. 10 and 15, vote April 1967; 1977 J.R. 32, 1979 J.R. 3, vote April 1979.*]

Treasurer; 4–year term. Section 1n. [*Created April 1967; repealed April 1979; see 1965 J.R. 80, 1967 J.R. 10 and 15, vote April 1967; 1977 J.R. 32, 1979 J.R. 3, vote April 1979.*]

Attorney general; 4–year term. Section 1p. [*Created April 1967; repealed April 1979; see 1965 J.R. 80, 1967 J.R. 10 and 15, vote April 1967; 1977 J.R. 32, 1979 J.R. 3, vote April 1979.*]

Secretary of state; duties, compensation. SECTION 2. [*As amended Nov. 1946*] The secretary of state shall keep a fair record of the official acts of the legislature and executive department of the state, and shall, when required, lay the same and all matters relative thereto before either branch of the legislature. He shall perform such other duties as shall be assigned him by law. He shall receive as a compensation for his services yearly such sum as shall be provided by law, and shall keep his office at the seat of government. [*1943 J.R. 60, 1945 J.R. 73, vote Nov. 1946*]

Treasurer and attorney general; duties, compensation. SECTION 3. The powers, duties and compensation of the treasurer and attorney general shall be prescribed by law.

County officers; election, terms, removal; vacancies. SECTION 4. [*As amended Nov. 1882, April 1929, Nov. 1962, April 1965, April 1967, April 1972, April 1982, Nov. 1998, and April 2005*] **(1)** (a) Except as provided in pars. (b) and (c) and sub. (2), coroners, registers of deeds, district attorneys, and all other elected county officers, except judicial officers, sheriffs, and chief executive officers, shall be chosen by the electors of the respective counties once in every 2 years.

(b) Beginning with the first general election at which the governor is elected which occurs after the ratification of this paragraph, sheriffs shall be chosen by the electors of the respective counties, or by the electors of all of the respective counties comprising each combination of counties combined by the legislature for that purpose, for the term of 4 years and coroners in counties in which there is a coroner shall be chosen by the elec-

The Wisconsin Governor's Partial Veto

Richard A. Champagne
chief

Staci Duros, PhD
legislative analyst

Madeline Kasper, MPA, MPH
legislative analyst

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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 or reduce appropriations.[1] But the partial veto power allows the governor to strike 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 than simply having veto power over an entire bill. Armed with the partial veto, the governor can alter text and numbers to create laws that not only may have been unintended by the legislature, but also that the legislature deliberately rejected. It is no wonder that U.S. Circuit Judge Richard Posner described Wisconsin's partial veto as "unusual, even quirky."[2]

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."[3] This language remained unchanged for 60 years. In 1990, the voters amended the constitution to provide 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."[4] This amendment prohibited the governor from striking letters in a bill to create an entirely new word, a practice started by Governor Anthony Earl and continued by Governor Tommy Thompson. In 2008, the voters again amended the constitution to prohibit the governor from creating "a new sentence by combining parts of 2 or more sentences of the enrolled bill."[5] 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.

For the first 40 years after the creation of the governor's partial veto power, the partial veto was rarely used. Aside from the 1931 and 1933 biennial budget bills, in which there were 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. In that session, Governor Warren Knowles partially vetoed 27 provisions in the 1969 biennial budget bill. 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 Thompson in the 1991 biennial budget bill.

This paper looks at the origins and history of the 1930 constitutional amendment, discusses changes to the partial veto power in 1990 and 2008, examines judicial interpretation of the governor's partial veto power, summarizes the different kinds of partial

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1. Forty-four 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, North Carolina, Rhode Island, and Vermont. See the *2018 Book of the States*, http://knowledgecenter.csg.org.

2. Risser v. Thompson, 930 F.2d 549, 554 (1991).

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

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

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

vetoes, presents tests for when and how the governor may exercise the partial veto power, and documents the frequency of partial vetoes since 1931. As the paper will show, the governor's partial veto power is "unusual" and "quirky," as Judge Posner noted, but even after recent constitutional restrictions, it remains a powerful means for the governor to play a role in the lawmaking process.

Origins and legislative history of the 1930 constitutional amendment

This section is divided into two parts. The first part provides an overview of the discussion from 1912 to 1924 on whether Wisconsin should or needed to adopt a constitutional amendment granting partial veto authority to the governor. The second part discusses the legislative history from 1925 onwards, leading up to the 1930 constitutional amendment and the first use of the partial veto power.

Origins

As Wisconsin entered the second decade of the twentieth century, a conversation concerning the role of the executive in appropriation bills came to light most prominently in a 1912 book called *The Wisconsin Idea* by Charles McCarthy.[6] In his book, McCarthy praised Wisconsin's existing appropriation methods in contrast to the customs in other states. In his view, Wisconsin's state appropriation method was advantageous "for all appropriation bills must receive the sanction of the joint committee on finance," and one by one, these appropriation bills were reported out to the legislature. Wisconsin's process allowed members of the legislature to consider each appropriation bill separately, with a statement of the actual finances of the state, to decide on its own merits whether to pass or kill the bill.[7] McCarthy further argued that Wisconsin was "fortunate" in not having a "budget bill,"—which he defined as "one inclusive bill containing all appropriations"[8]—stating that the budget bill was "a fruitful source of logrolling,[9] and in nearly all states has to be supplemented by other more dangerous machinery, such as the power of the governor to veto items in order to do away with riders."[10] Despite McCarthy's interpretation of Wisconsin's appropriation methods, his ideal description of the legislative process did

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6. Charles McCarthy, *The Wisconsin Idea* (New York: Macmillan Company, 1912). McCarthy's *The Wisconsin Idea* summarized the philosophy and goals of the Progressive movement. McCarthy served as the founder and chief of the Wisconsin Legislative Reference Bureau (then known as the Legislative Reference Library) from 1901 until succumbing to an illness in 1921.

7. Charles McCarthy, *The Wisconsin Idea* (New York: The MacMillan Company, 1912), 201.

8. Charles McCarthy, *The Wisconsin Idea* (New York: The MacMillan Company, 1912), 203. In his view, McCarthy lumps the "budget bill" with a system "that appropriations should be made for all state departments merely for a two year period," which "has no precedent on the face of the earth," 203.

9. In *State v. Zimmerman*, the Wisconsin Supreme Court defined logrolling as "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 or 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," 447–48.

10. Charles McCarthy, *The Wisconsin Idea* (New York: The MacMillan Company, 1912), 202.

not seem to match contemporary practice. A change in legislative process that started in 1911 would spark a vociferous debate over granting authority to the Wisconsin governor to veto single items in an appropriation bill during the 1913 legislative session.

Throughout the 1911 legislative session, the Wisconsin Legislature started the practice of packaging multiple appropriation measures into larger, omnibus bills. At the same time, a change in the form and comprehensiveness of appropriation measures began with the enactment of Chapter 583, Laws of 1911,[11] which required any administrative body that dealt with "receipts, expenditures, or handling of any state funds" to submit an "estimate of its revenues and expenditures for each fiscal year of the ensuing biennial period."[12] The 1913 legislature was the first to contend with this new statute at the same time as the legislature continued the practice of bundling appropriation bills. Yet lawmakers waited until late in the session before presenting to the governor a few appropriation bills, which also happened to call for record expenditures.[13] These factors would prove to be formidable obstacles to Governor Francis E. McGovern.[14] Thus the public debate over granting authority to the Wisconsin governor to veto single items in an appropriation bill arose from McGovern's frustration with the Committee on Finance's handling of appropriation bills. Over 30 percent of the session's appropriations were for the state university and the state normal schools.[15]

According to McGovern, the 1913 legislature appropriated nearly $25 million and included four-fifths of it in "blanket bills."[16] McGovern argued that these singular "omnibus bills," which carried "from fifty to one hundred items," were reported out at the last minute so as to make it impossible "to determine the wisdom of the appropriation" much less have enough time for the legislature to potentially override his veto or pass another bill.[17] The legislature's practice "tie[d] the hands of the executive, and he practically ha[d] no alternative except to approve of the appropriations as a whole." McGovern concluded

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11. Chapter 583, Laws of 1911. Note that prior to 1983, Wisconsin referred to enacted legislation as "chapters" instead of "acts."

12. Chapter 583, Laws of 1911, took effect on July 8, 1911. It created the State Board of Public Affairs, the board that would oversee submitted estimates in an attempt to introduce a more formalized "budget system." It seems likely that this act and the increasing reliance on bundling appropriation bills led to various procedural changes in the legislature's "budget system" and culminated in the provision for a biennial executive budget bill by Chapter 97, Laws of 1929.

13. Tax projections had made it apparent that revenues would fall significantly short of appropriations, and McGovern authorized a supplementary levy of $1.5 million to pay for it. Thus, criticism for McGovern's administration began as soon as he signed the appropriation bills.

14. Francis E. McGovern served as Wisconsin's twenty-second governor from 1911 to 1915.

15. The 1913 legislature appropriated nearly $25 million, of which 32 percent (or $8 million) was appropriated for the state university and the state normal schools. A "normal school" is the historical term for an institution created to train high school graduates to be teachers by educating them in the norms of pedagogy and curriculum; for more information, see Wisconsin Board of Regents of Normal Schools, *The Normal Schools of Wisconsin: Catalog, 1911–1912* (Madison, WI: Democrat Printing Company, 1912).

16. The term "blanket bill" is used synonymously with bundled appropriation bills. *Wood County Reporter*, "Signs Money Bill Under a Protest: Governor States His Desire to Veto Items in University Appropriation," August 14, 1913, 7; *The Dunn County News*, "Governor Asks for More Power," August 12, 1913, 1.

17. Associated Press, "M'Govern Criticises State Legislature," printed in *Janesville Daily Gazette*, September 18, 1913, 1. McGovern's comments were delivered in an address at the Fox River Valley Fair.

that either the Wisconsin governor must be given the power to veto specific items or the individual items must be reported out as separate appropriation bills. From the perspective of the legislature during that session, F. M. Wylie, the senate chief clerk, maintained that the "veto power of the governor should be abolished, instead of extended to items of the budget appropriation bills."[18]

Meanwhile, during the fall of 1913 and spring of 1914, McGovern's decision not to veto the appropriation bills instigated his promotion of the idea that the Wisconsin governor should be given the equivalent of a line item veto. McGovern's public campaign forced a rather public debate between McGovern and Charles McCarthy. McCarthy declared that "[t]he greatest joker now existing in America is the executive veto of items in an appropriation bill."[19] For the handling of state finances, McCarthy openly reiterated ideas from his 1912 book, *The Wisconsin Idea*,[20] reiterating that it promotes "inefficiency, corruption, and logrolling."[21] Privately, McCarthy wrote to McGovern suggesting that McGovern was making a mistake "to stand for the veto of appropriation items."[22] McGovern responded to McCarthy's public and private statements, suggesting that "there was enough discord in the Capitol and enough evidence of want of harmony in the Progressive camp without any further proof of insurgency."[23] The disharmony remained, and at the general election in November 1914, McGovern lost his bid for a U.S. Senate seat,[24] effectively ending the campaign for partial veto authority for the next decade.[25]

Even the newly elected Wisconsin governor, Emanuel L. Philipp,[26] knew he was not

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18. *Janesville Daily Gazette*, "Want's Veto Power in People's Hands," April 17, 1914, 1. Senate Chief Clerk Wylie added that the referendum, when made a part of the constitution will provide a veto power by the people," therefore "the veto of the governor should then at the most be merely advisory, as are his messages . . ."

19. *The La Crosse Tribune*, "Dr. Charles McCarthy Does Not Concur with Governor McGovern as to This Budget as Outlined with Appropriations by Separate Bills Solution of Reference Expert," April 4, 1914, 10.

20. Although, McCarthy seemed to have softened his stance on the idea of a "budget bill." In an interview, McCarthy stated that "he [did] not wish to be understood as opposing the budget system," but instead argued that "the legislature ought to pass on each bill separately to avoid pork-barrel, rider-covered legislation." Interview appeared in an article by Ellis B. Usher, "General Confusion, Leader in Politics in Wis-Con-Sin: Nobody Knows and Nobody Cares about State Affairs and the Cost Goes Up," *The Leader-Telegram*, April 12, 1914, 12.

21. *The La Crosse Tribune*, "Dr. Charles McCarthy Does Not Concur with Governor McGovern as to This Budget as Outlined with Appropriations by Separate Bills Solution of Reference Expert," April 4, 1914, 10.

22. Francis E. McGovern papers (1909–15, 1935), Box 15, Letter to McCarthy dated April 1, 1914.

23. Francis E. McGovern papers (1909–15, 1935), Box 15, Letter from McCarthy dated April 6, 1914.

24. McGovern chose to not seek a third term for governor and instead ran for the U.S. Senate seat.

25. In addition, the Wisconsin electorate defeated ten proposed constitutional amendments on the 1914 ballot with an average of 84,416 voting against each measure; this may also explain why constitutional amendments did not appear on an election ballot until April 1920 and no amendment was ratified until 1922.

26. Emanuel L. Philipp served as Wisconsin's twenty-third governor from 1915 to 1921. Emanuel L. Philipp stated that his election to the governor's office was "a complete repudiation of the much heralded Wisconsin idea" and proof that the people of Wisconsin "have had enough of experimental legislation"; see *The Madison Democrat*, "'Wisconsin Idea' Given Rebuke by Badger Electors," November 8, 1914; *The Racine Journal Times*, "My Election is a Contract with the People to Reduce the State's Expenditures," January 14, 1915, 3; as well as generally the *Milwaukee Journal*, November 4, 1914, and the *Milwaukee Free Press*, November 8, 1914. Philipp threatened to close the Legislative Reference Library in 1915 because it was seen as a progressive "bill factory"; see *The La Crosse Tribune*, "Economy is Plea of Governor E. L. Philipp in his First Message: Favors Abolition of the Reference Bureau," (January 14, 1915), 1 and 10; Emanuel L. Philipp, "Governor's Message to Legislature, dated January 14, 1915," published in *Messages to the Legislation and Proclamations of Emanuel L. Philipp* (Milwaukee, WI: Wisconsin Printing Company, 1920), 11.

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immune to the same appropriations process. In a special message sent to the legislature in May 1915, Governor Philipp requested that appropriations be made in many separate bills.[27] In his message, Philipp stated that separate appropriation bills was the "only way in which the governor may discharge his constitutional duty to approve or disapprove appropriations without causing unnecessary trouble and delay for the legislature."[28] Philipp concluded his statements by saying that "it [was] advisable to send the appropriation bills here in such form as will enable him to disallow such items as he deems inadvisable, while approving of all items which seem to him advisable."[29]

Nevertheless, debates on executive veto power waned and did not resurface until a decade later.

Legislative history of the 1930 constitutional amendment

The partial veto power as exercised by Wisconsin's governors was created by constitutional amendment in 1930, and the road to ratification started five years earlier. In 1925, two resolutions to expand the governor's veto powers were introduced.[30] Senator Max W. Heck introduced the first proposal, 1925 Senate Joint Resolution 8, which authorized the governor to withhold approval from any portion of any bill, which would not become law until the executive's wishes were complied with or the legislature overrode the veto by a two-thirds vote.[31] Heck's proposal was rejected in favor of the second proposal,[32] Senator H. B. Daggett's 1925 Senate Joint Resolution 23,[33] which proposed the following language relevant to the current discussion to amend article V, section 10, of the Wisconsin Constitution:

> The governor may disapprove or reduce items or parts of items in any bill appropriating money. So much of such bill as he approves shall upon his signing become law. As to each

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27. Emanuel L. Philipp's Executive Communication sent May 18, 1915, published in *Journal Proceedings of the Fifty-Second Session of the Wisconsin Legislature in Assembly* (Madison, WI: Cantwell Printing Co., 1915), 856–65; Emanuel L. Philipp, "Special Executive Communication to Legislature, dated May 18, 1915," published in *Messages to the Legislation and Proclamations of Emanuel L. Philipp* (Milwaukee, WI: Wisconsin Printing Company, 1920), 67–77. See also *The Eau Claire Leader*, "Governor Wants State Funds Cut: Governor in Message Warns Expenses Now Exceed Income," May 21, 1915, 5.

28. Philipp message, Assembly Journal, 865.

29. Philipp message, Assembly Journal, 865.

30. John J. Blaine served as Wisconsin's twenty-fourth governor from 1921 to 1927.

31. The section would have read (amended text in italics) "Every bill which shall have passed the legislature shall, before it becomes law, be presented to the governor; if he approves, he shall sign it, but if not, he shall return it, with his objections, *which may or may not contain recommendations for the adoption of such amendments to the bill as will, when incorporated therein, remove such objections*, to that house in which it shall have originated, who shall enter the objections at large upon the journal and proceed to reconsider it. *If such recommendations as to amendment are included in the objections, and after reconsideration, a majority of the members present shall agree to adopt the amendment recommended, the bill shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if such amendment is adopted by a majority of the members present, the bill as amended shall become law. If such recommendations as to the amendment are not included in the objections, or if they are not adopted by a majority present in either house, the house in which the bill shall have originated shall proceed to reconsider it,* and if, after such reconsideration, two-thirds of the members present."

32. The Committee on Judiciary reported and recommended rejection of SJR-8 on April 29, 1925.

33. The drafting file for 1925 SJR-23 does not exist.

> item disproved or reduced, he shall transmit to the house in which the bill originated his reasons for such disapproval or reduction, and the procedure as to such items shall then be the same as in the case of a bill disapproved as a whole.

Although the resolution received a favorable committee recommendation,[34] the senate refused to adopt the joint resolution by a 14 to 9 margin.[35] Neither proposal caused much fanfare or reaction from the media.

During the 1927 legislative session, Senator William Titus introduced another resolution to amend the constitution.[36] Titus's resolution, 1927 Senate Joint Resolution 35, proposed the following language (amended text in italics):

> Every bill which shall have passed the legislature shall, before it becomes a law, be presented to the governor; if he approve, he shall sign it, but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large upon the journal and proceed to reconsider it. *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*. If, after such reconsideration, two-thirds of the members present shall agree to pass the bill, *or the part of the bill objected to*, it shall be sent, together with the objection, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present it shall become a law. But in all such case the votes of both houses shall be determined by yeas and nays, and the names of the members voting for or against the bill *or the part of the bill objected to*, shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within six days (Sundays excepted) after it shall have been presented to him, the same shall be a law unless the legislature shall, by their adjournment, prevent its return, in which case it shall not be a law.[37]

The language of Titus's proposal differs from the two proposals introduced in the previous legislative session, most notably in what the governor may reject in an appropriation bill; in 1925, "the governor may disapprove or reduce items or parts of items in any bill appropriating money"; while in 1927, the governor may approve appropriation bills "in whole or in part." The drafting record for 1927 Enrolled Joint Resolution 37 indicates that Senator William Titus requested the Legislative 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. Titus's proposed amendment passed both houses and proved to be once

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34. The Committee on Judiciary reported and recommended adoption of SJR-23 on April 29, 1925.
35. This rejection occurred on May 1, 1925. Note that nine senators were absent or not voting.
36. Fred R. Zimmerman served as Wisconsin's twenty-fifth governor from 1927 to 1929.
37. 1927 SJR-35 was published as 1927 Enrolled Joint Resolution 37, 1927.

again uncontroversial.[38] During the 1929 legislative session, Senator Thomas M. Duncan introduced the same resolution, 1929 Senate Joint Resolution 40.[39] Once again the proposal passed both houses[40] and was to be submitted for voter approval at the general election in November 1930.[41]

In the 18 months leading up to the election, several arguments were advanced in support of, or opposition to, the proposed constitutional amendment. These arguments should sound familiar because they basically mirrored the discussion from 15 years earlier. Most discussions on the amendment summarized the proposed power of the governor "to veto single items" in appropriation bills rather than "parts of" appropriation bills.

Proponents of the amendment argued that the new budgetary procedure adopted by the 1929 legislature compelled the executive item veto authority.[42] Under the newly adopted budget system, Senator Duncan noted that although the governor was responsible for introducing an original budget bill, a hostile legislature had the power to "embarrass the governor by increasing the amounts of separate items in it."[43] The governor was left with two choices to counteract the legislature's approach: sign the budget bill or veto it in its entirety; either action would bring Wisconsin back to the old system of "buck-passing," whereby the governor and the legislature disclaim responsibility for large appropriations, which the new system had been "designed to eliminate."[44] Many proponents argued that the proposal to grant the governor power to veto separate appropriation items in conjunction with the new budget procedure would rebalance the powers of the executive and legislative branches and provide another means of checking and controlling "illegal and extravagant expenditures."[45] Another paper indicated that "the definiteness of responsibility" for both the governor and the legislature was "a paramount necessity in good government in view of increasing complexity of state affairs."[46]

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38. The resolution passed the senate on March 17, 1927, and the assembly on May 5, 1927. *The Capital Times*, "Beats Plan for Repeal of Car Tax," (March 15, 1927), 1. The article categorized the joint resolution as such: "This would allow that executive to return unfavored appropriations to the legislators, at the same time passing others in the same bill thus speeding the legislative work."

39. Walter J. Kohler Sr. served as Wisconsin's twenty-sixth governor from 1929 to 1931.

40. 1929 SJR- 40 was published as 1929 Enrolled Joint Resolution 43, 1929.

41. The resolution passed the senate on March 7, 1929, and the assembly on April 19, 1929.

42. Among other provisions, Chapter 97, Laws of 1929, created the State Budget Bureau in the executive department and provided for a state budget system. Under Chapter 97, the governor was made responsible for the budget estimates, which were then incorporated into a single appropriation bill. Since the advent of program budgeting in the early 1960s, governors have usually submitted single omnibus budget bills that contain both program and fiscal proposals. Senator Duncan noted that the amendment "merely g[ave] back to the governor the power [the legislature] took away when [they] passed the budget system" during the 1929 legislative session; see *The Capital Times*, "Duncan Tells Need for New Vote Powers," October 14, 1930, 7.

43. *The Capital Times*, "League of Voters Draws Attention to Voting at Election on Tuesday," November 2, 1930, 16; *The Capital Times*, "Duncan Tells Need for New Vote Powers," October 14, 1930, 7.

44. *The Capital Times*, "Duncan Tells Need for New Vote Powers," October 14, 1930, 7.

45. *Racine Times-Call*, "The Budget System," published in the *The Rhinelander Daily News*, December 8, 1930, 4. In addition, the column concluded by stating that "[a]ny attempt to emasculate or repeal it will be a confession of weakness and incompetency."

46. *The Leader-Telegram*, "The Amendment," November 2, 1930, 14.

Opposition to the amendment represented more than a minor correction in Wisconsin's appropriation process. Granting more veto authority further extended the already broad powers of the executive and resulted in the strengthening of executive power at the expense of the legislative. Philip La Follette, who made the issue part of his campaign for governor in 1930, became the leading voice of the opposition. At a campaign rally less than a week before the election, La Follette argued that the proposal "smack[ed] of dictatorship."[47] From La Follette's perspective and those with like-minded views, opinions in favor of the amendment were based on proponents' faulty premises because they assumed a greater likelihood that the "dictatorial powers" would "be used benevolently for the whole public interest." He concluded by offering that "dictatorship or dictatorial powers appear efficient and desirable until their crushing effect is felt in actual operation."[48]

The ballot question appeared as follows: "Shall the constitutional amendment, proposed by Joint Resolution No. 43 of 1929, be ratified so as to authorize the Governor to approve appropriation bills in part and to veto them in part?" In terms of explaining the question on the ballot, Secretary of State Theodore Dammann stated that "if this amendment is ratified the Governor will be authorized to approve appropriation bills in part and to veto them in part."[49]

At the general election held on November 4, 1930, the Wisconsin electorate ratified the constitutional amendment by a vote of 252,655 for and 153,703 against.[50] The amendment added the following language to article V, section 10, of the Wisconsin Constitution:

> 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 very same election, Philip La Follette became Wisconsin's twenty-seventh governor[51] and became the first governor to make use of the partial veto in 1931. La Follette exercised the "new right of partial veto" twice.[52] La Follette's first partial veto removed an appropriation in a bill on wage payments.[53] La Follette's second partial veto dealt with appropriations in the executive budget bill.[54]

In his veto message on the executive budget bill, Governor La Follette gave his views on the partial veto and what he construed its limits to be.

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47. *The Capital Times*, "Phil in Speech at Whitehall, Opposes Giving Governor Further Veto Power," October 30, 1930, 5.

48. *The Leader-Telegram*, "Phil Opposes Constitutional Amendment," November 1, 1930, 12.

49. Office of the Secretary of the State of Wisconsin, Notice of Election, published September 13, 1930.

50. The measure passed by a majority of 98,952 and carried 66 of the 71 counties.

51. La Follette served as governor from 1931 to 1933.

52. *The Capital Times*, "487 New Laws were Enacted by Legislature," July 28, 1931, 2.

53. 1931 Assembly Bill 48 was published on April 24, 1931, as Chapter 66, Laws of 1931. The act amended statutes related to the waiting period under the worker's compensation act.

54. 1931 Assembly Bill 107 was published on April 27, 1931, as Chapter 67, Laws of 1931.

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> Since both the Executive Budget and Bill No. 107, A., decrease the appropriations for many of the agencies and departments from what they received in 1930–31, it consequently follows that the Executive cannot veto these items without increasing the appropriation over that provided in Bill No. 107, A. For example, the University of Wisconsin received for operation in 1930–31—$2,990,663. This appropriation continues until and unless changed by the Legislature, and would provide the University, if left unchanged, with $5,981,326 for the coming biennium, Under the Executive Budget recommendations, this particular item was decreased $151,326 for the coming biennium. Bill No. 107, A., increases the Executive Budget recommendations for this item by $80,000. If the Executive were to disapprove of this item in Bill No. 107, A., he would not restore the University appropriation for operation to that provided in the Executive Budget. The veto of this item in Bill No. 107, A., would instead restore the appropriation to that provided by the Legislature of 1929 and would thereby increase the appropriation by $71,326 over that provided in Bill No. 107, A.
>
> In the exercise of the authority to veto parts of appropriation bills, the Executive is therefore confined practically, at the present time, to those items in Bill No. 107, A., where the veto will in fact reduce the total appropriation.[55]

The legislature "showed no displeasure at the governor's action."[56]

Discussion and debate on the subject of the partial veto spanned over two decades of history, including six governors and eleven legislative sessions. Arguments for and against the constitutional amendment remained the same—even the ambiguity of language, specifically in the use of "items" versus "parts," not only among resolution, but also in media discussion.

Judicial interpretation of governor's partial veto powers

There have been eight Wisconsin Supreme Court decisions interpreting the governor's partial veto power.[57] Six of the cases involved the original 1930 version of article V, section 10, of the Wisconsin Constitution, and two of the cases dealt with the partial veto provision after the 1990 amendment. There has also been one federal appellate decision, addressing the question of whether the governor's partial veto power violated the federal Constitution.[58] There have been no state or federal cases interpreting the 2008

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55. Governor Philip La Follette, "Governor's Message to the Legislature, dated April 21, 1931," published in the *Assembly Journal Proceedings of the Sixtieth Session of the Wisconsin Legislature* (Madison, WI: Cantwell Printing Co., 1931), 1135–41.

56. William L. Thompson, "The Legislative Week," from *Associated Press* published in the *Leader-Telegram*, April 26, 1931.

57. State ex rel. Wisconsin Telephone Co. v. Henry, 218 Wis. 302, 260 N.W. 486 (1935); State ex rel. Finnegan v. Dammann, 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); State ex rel. Wisconsin Senate v. Thompson, 144 Wis. 2d 429, 424 N.W.2d 385 (1988); Citizens Utility Board v. Klauser, 194 Wis. 2d 484, 534 N.W.2d 608 (1995); Risser v. Klauser, 207 Wis. 2d 176, 558 N.W.2d 108 (1997).

58. Risser v. Thompson, 930 F.2d 549 (1991). In this case, the court held that the partial veto did not violate the federal Constitution.

amendment to the partial veto provisions of article V, section 10. All of these cases address the intent and application of the governor's partial veto power and together devise tests for when and how the governor may partially veto bills. As seen in the discussion of case law below, Wisconsin courts have generally favored an expansive view of the governor's partial veto power.

State ex rel. Wisconsin Telephone Co. v. Henry (1935). This was the first partial veto case to come before the court and involved the governor's partial veto of an emergency relief bill in which he approved the appropriations in the bill but vetoed the provisions relating to the appropriations. The issue was whether the governor could partially veto non-appropriation provisions. The court held that the governor could partially veto non-appropriation text in an appropriation bill, announcing its first test for a valid partial veto: what must remain after a partial veto is "a complete, entire, and workable law."[59] In other words, the part vetoed must be separable from the parts not vetoed to leave a coherent whole. The court also noted that the governor's partial veto power was "intended to be as coextensive as the legislature's power to join and enact separable pieces of legislation in an appropriation bill."[60] This observation would become important in later cases when the court would examine what constitutes a "part" of an appropriation bill. Although the court allowed the governor's partial veto to stand, the court implied that in some cases conditions or provisos attached to appropriations may not be severable. In such instances, the governor could not veto text relating to the expenditure of appropriated moneys without vetoing the entire appropriation.

State ex rel. Finnegan v. Dammann (1936). The issue in this case was whether a bill that the governor had partially vetoed contained an appropriation. The bill did not create or amend an appropriation, but it affected the amount that could be expended under an existing appropriation by raising motor vehicle fees, which were then credited to a continuing appropriation. The court laid out the key features of an appropriation bill, and defined an appropriation: (1) "A measure before a legislative body authorizing the expenditure of public moneys and stipulating the amount, manner, and purpose of the various items of expenditure"; (2) "An appropriation . . . means the setting apart a portion of the public funds for a public purpose"; and (3) "An appropriation is 'the setting aside from the public revenue of a certain sum of money for a specified object, in such manner that the executive officers of the government are authorized to use that money, and no more, for that object, and no other.'"[61] This definition would guide the court in future cases.

The court found that the bill was not an appropriation bill, but a revenue bill; hence, the governor could not partially veto the bill. The court stated that an appropriation bill

59. 218 Wis. 302, 314 (1935).

60. 218 Wis. 302, 315 (1935).

61. 220 Wis. 134, 148 (1936).

must “within its four corners contain an appropriation.”[62] Raising revenues was therefore not the same as appropriating moneys. Importantly, the court held, it does not matter if a bill “has an indirect bearing upon the appropriation of public moneys.”[63] Instead, the bill must specifically appropriate moneys.

Here is the “four corners” test that later cases would use to determine if a bill is an appropriation bill, subject to the partial veto. The bill must contain an appropriation.

State ex rel. Martin v. Zimmerman (1940). In this case, the governor vetoed whole sections, subsections, and paragraphs of a bill to embark on an entirely new policy direction different from what the legislature intended. The issue in this case was whether the governor could make these kinds of affirmative policy changes through a partial veto. The court discussed the reasons for the partial veto power: 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 the governor to veto the entire bill and thus stop the wheels of government or approve the obnoxious act.”[64] In other words, the partial veto power was a means to undo the bundling together of appropriation provisions that before 1911 had appeared in individual bills. After the 1911 session, the legislature bundled individual appropriation bills to force the governor to sign or veto the bill in its entirety.

The court acknowledged that the governor’s veto “did effectuate a change in policy” but said the test for a valid partial veto is “whether the approved parts, taken as a whole, provide a complete workable law.”[65] The constitutional focus for partial veto jurisprudence was on what remains in an appropriation bill after partial veto, not on what is removed from the bill or on whether the policies that remain in the bill are the same as those passed by the legislature.

State ex rel. Sundby v. Adamany (1976). This case involved a local tax referendum bill that permitted local governments to exceed levy limits. The governor’s partial veto made these referenda mandatory instead of optional, undoing what the legislature had intended and passed. The court upheld the veto and summarized the core features of the governor’s partial veto power. The partial veto was adopted to prevent logrolling and omnibus appropriation measures. The court held that the governor can partially veto all parts of an appropriation bill, even non-appropriation text, and the test is “whether or not the provisions vetoed constituted a separable portion of the entire bill.”[66] The partial veto can change public policy “as long as the portion vetoed is separable and the remaining provisions constitute a complete and workable law.”[67] A bill subject to the partial

62. 220 Wis. 134, 147 (1936).
63. 220 Wis. 134, 148 (1936).
64. 233 Wis. 442, 448–49 (1940).
65. 233 Wis. 442, 450 (1940).
66. 71 Wis. 2d 118, 129 (1976).
67. 71 Wis. 2d 118, 130 (1976).

veto "must contain an appropriation within its four corners, rather than merely affecting another law which contains an appropriation."[68] The governor's partial veto power was "intended to be as coextensive as the legislature's power to join and enact separable pieces of legislation in an appropriation bill."[69] Finally, "the governor's action may alter the policy as written in the bill sent to the governor by the legislature."[70]

State ex rel. Kleczka v. Conta (1978). In this case, the court made clear that the governor could veto provisions that were conditions or provisos on an appropriation without vetoing the entire appropriation, reversing the implication from language in *Henry*.[71] In this instance, the governor had partially vetoed appropriation provisions in a bill that turned an income tax add-on into an income tax checkoff, thereby requiring a general fund expenditure for the checkoff. This was the most expansive use of the partial veto power to date. The court also held that "Severability is indeed the test of the Governor's constitutional authority to partially veto a bill" and that it "must be determined, not as a matter of form, but as a matter of substance."[72]

The court distinguished the "partial veto" power from the "item veto" power, observing that in item veto states "the Governor is confined to the excision of appropriations or items in an appropriation bill."[73] This is not true for a partial veto. The partial veto test is whether what remains after a veto is a "complete and workable law."[74] The court noted that "a governor's partial veto may, and usually will, change the policy of the law."[75] The court restated that the governor's partial veto "authority is coextensive with the authority of the Legislature to enact policy initially."[76] Finally, the court called the *Henry* language on appropriation conditions and provisos mere *dicta*, which "does not correctly state the Wisconsin law."[77] All parts of an appropriation bill are subject to the governor's partial veto.

State ex rel. Wisconsin Senate v. Thompson (1988). At issue in this case was the governor's partial veto of phrases, digits, letters, and word fragments in an executive budget bill, so as to create new words, sentences, and dollar amounts. This was known as the "Vanna White" veto. The court upheld this new use of the partial veto, affirming 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

68. 71 Wis. 2d 118, 131 (1976).
69. 71 Wis. 2d 118, 133 (1976).
70. 71 Wis. 2d 118, 134 (1976).
71. 218 Wis. 302, 313–14 (1935).
72. 82 Wis. 2d 704–05 (1978).
73. 82 Wis. 2d 679, 705 (1978).
74. 82 Wis. 2d 679, 707 (1978).
75. 82 Wis. 2d 679, 708 (1978).
76. 82 Wis. 2d 679, 709 (1978).
77. 82 Wis. 2d 679, 715 (1978).

digits, as long as what remains after veto is a complete, entire, and workable law."[78] This literal reading of the word "part" meant that every part of an appropriation bill, including action phrases, letters, punctuation, and digits, could be partially vetoed. But the court also held that "the consequences of any partial veto must be a law that is germane to the topic or subject matter of the vetoed provisions."[79] In other words, the part that remained after a partial veto must be germane to the part that was vetoed. In fact, the court noted that the germaneness requirement has "achieved the force of law."[80]

To justify its expansive reading of partial veto power, the court claimed that the purpose of the partial veto was more than to prevent logrolling. Instead, "the partial veto power in this state was adopted . . . 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."[81] In other words, the partial veto was "aimed at achieving joint exercise of legislative authority by the governor and legislature over appropriation bills."[82] What the legislature could put together, the governor could undo, even if it involved creating new words and numbers. Finally, the court added that "the test applied to determine the validity of the governor's partial vetoes is not one of grammar . . . Awkward phrasing, twisted syntax, alleged incomprehensibility and vagueness are matters to be resolved only on a case-by-case basis."[83]

It was in the wake of this decision that the legislature hurriedly adopted a proposed amendment to the constitution, which was approved by the voters in 1990, to prohibit the governor, in approving an appropriation bill, from creating a new word by rejecting individual letters in the words of the enrolled bill.

Citizens Utility Board v. Klauser (1995). The issue in this case was whether the governor may partially veto an appropriation bill by striking an appropriation amount and writing in a lower amount. In other words, the issue involved whether the governor could use the partial veto to create new appropriation amounts that did not appear in the bill. The court found the write-down of an appropriation amount a valid exercise of the governor's partial veto power, contending that a reduced appropriation amount is a "part" of the amount originally appropriated in the bill, relying on the *Henry* literal dictionary definition of "part."

This was the first case after the 1990 amendment, which had limited the governor's partial veto power, and the court ruled again in favor of an expanded partial veto power. Interestingly, the court acknowledged its practice of expansively reading the partial veto

78. 144 Wis. 2d 429, 437 (1988).
79. 144 Wis. 2d 429, 437 (1988).
80. 144 Wis. 2d 429, 452–53 (1988).
81. 144 Wis. 2d 429, 446 (1988).
82. 144 Wis. 2d 429, 454 (1988).
83. 144 Wis. 2d 429, 462–63 (1988).

power: "this court has, for better or for worse, broadly interpreted that power . . . [and so its decision] will likely come as a surprise to few."[84]

Risser v. Klauser (1997). This case involved the governor's write-down of a non-appropriation amount—a cap on bonding—in an appropriation bill. The issue was whether the governor could write down lower non-appropriation amounts, as the *Citizens Utility Board* court had allowed the governor to do on appropriation amounts. The court held that in exercising partial veto power, the governor could not write down non-appropriation amounts. Instead, the governor could just strike digits of non-appropriation amounts. This was the first real limitation of the partial veto power in Wisconsin case law, other than in cases in which the court found that the governor had attempted to partially veto a non-appropriation bill. In reaching its decision, the court noted that "an appropriation involves an expenditure or setting aside of public funds for a particular purpose."[85] This was a restatement of the *Finnegan* definition of an appropriation. The court rejected the argument that bonding caps affect the appropriation of state funds and should therefore be treated like appropriations. The court said that "the fact that a provision generates revenue and affects an appropriation because the amount appropriated is determined by the amount of revenue generated does not convert the bill into an appropriation bill nor the provision into an appropriation."[86]

The court reasoned that a bill does not become an appropriation bill because it affects an appropriation, nor does a provision in a bill become an appropriation simply because it affects an appropriation. Significantly, the court pointed out that the bonding caps were not in chapter 20 of the Wisconsin Statutes: "Because Wisconsin bill drafters follow the statutory directive to list appropriations in chapter 20, and because we have the benefit of the clear *Finnegan* rule, we avoid the repeated need to resolve this question of whether a provision is an appropriation or a bill is an appropriation bill."[87] Under *Risser v. Klauser*, there is a litmus test of sorts: a bill is not an appropriation bill if it does not treat a chapter 20 appropriation.[88]

What are the types of partial vetoes?

Digit veto

Governor Patrick Lucey was the first governor to use the partial veto to remove a single

84. 194 Wis. 2d 484, 502 (1995).

85. 207 Wis. 2d 176, 193 (1997).

86. 207 Wis. 2d 176, 196 (1997).

87. 207 Wis. 2d 176, 198 (1997).

88. It is not at all certain that the chapter 20 test is a conclusive test for whether a bill contains an appropriation. After all, the legislature could enact legislation that intentionally created a new appropriation in a statutory chapter other than chapter 20. In such a case, it is hard to imagine the court finding the bill is not an appropriation bill because there is no chapter 20 provision in the bill.

digit from an appropriation bill—the "digit veto." In the 1973 biennial budget bill,[89] Governor Lucey reduced a $25 million highway bonding authorization to $5 million by striking the digit "2." Past governors had partially vetoed entire appropriation amounts, not individual digits in those amounts. The word "part" began to take on a literal meaning for purposes of article V, section 10 (1), of the Wisconsin Constitution covering every word and individual number on the pages of an appropriation bill.

All subsequent governors have used the digit veto to reduce state expenditure authority.

Editing veto

Governor Lucey continued his innovative use of the partial veto in the 1975 biennial budget bill,[90] vetoing 42 separate provisions in the bill, the largest number for a budget bill up to that time. One of the vetoed provisions authorized the expenditure of funds for tourism promotion. By partial veto, the governor vetoed the word "not" in the phrase "not less than 50%", thereby causing a 50 percent floor on cooperative advertising for tourism purposes to become a 50 percent ceiling. This was the first time a Wisconsin governor used the partial veto to expressly reverse the intent of the legislature.

In 1977, Acting Governor Martin J. Schreiber expanded the editing veto to enact a public policy that the legislature had expressly rejected. His partial veto of 1977 Assembly Bill 664[91] was the most controversial use of the partial veto to date. As passed by the legislature, Assembly Bill 664 had appropriated to the election campaign fund all moneys raised from a $1 voluntary add-on to a taxpayer's individual income tax bill. Acting Governor Schreiber's partial veto replaced the add-on with a checkoff, which meant that the $1 would be paid from the state's general fund rather than collected through individual tax returns. This was not just a policy reversal; it was a complete policy change, and was upheld in *Kleczka v. Conta*.

All subsequent governors have used the editing veto.

Vanna White veto

In 1983, Governor Tony Earl applied the partial veto in a manner that came to be known as the "Vanna White" veto, named after a *Wheel of Fortune* television game show host, who flips letters to reveal word phrases. This kind of partial veto struck letters within words to create entirely new words. In this instance, the veto involved appeals of municipal waste disposal determinations to the Public Service Commission. As partially vetoed by Governor Earl, appeals would be sent to the courts instead of to the PSC. To make this change, Governor Earl partially vetoed a paragraph of five sentences containing 121

89. Chapter 90, Laws of 1973.
90. Chapter 39, Laws of 1975.
91. Chapter 107, Laws of 1977, sections 51 and 53.

words into a new, one-sentence paragraph of 22 words.[92] The parts of an appropriation bill subject to veto were reduced to a collection of individual letters on the bill's pages.

Governor Tommy Thompson also used this type of partial veto to create entirely new words in bills during his first gubernatorial term. As discussed, in *Wisconsin Senate v. Tommy G. Thompson*, the court upheld Governor Thompson's use of the Vanna White veto on the 1987 biennial budget bill.[93] 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."[94]

Fewer than three weeks after the ruling, the legislature, with both houses controlled by the Democrats, held a one-day extraordinary session to adopt 1987 Senate Joint Resolution 71. The joint resolution proposed amending article V, section 10, of the Wisconsin Constitution, to specify that in approving an appropriation bill in part, the governor may not create a new word by striking individual letters in the words of the enrolled bill. The 1989 legislature approved the proposal on second consideration as 1989 Senate Joint Resolution 11, and on April 3, 1990, voters approved the measure by a two to one margin, officially eliminating the Vanna White veto.[95] While Governor Thompson lamented the passage of the amendment, stating that governors need "as many arrows in their quiver" as possible, Assembly Speaker Tom Loftus called the amendment "a step in the right direction" with a reaffirmation that, in the American system of lawmaking, the people do not think "Governors should have the power to make law."[96]

Write-down veto

Governor Thompson employed the partial veto power more than any other governor, using the digit, editing, and Vanna White vetoes. His most significant innovation in expanding the partial veto power, however, was the "write-down" veto. In a write-down veto, the governor reduces an appropriation amount by striking the appropriation amount and then writing down a lower amount, so as to create an entirely new number with potentially entirely different digits. In his partial veto of the 1993 biennial budget bill,[97] Governor Thompson struck dollar amounts in nine instances and replaced them with lower amounts. But there were limits to the write-down veto. In the 1997 biennial

92. 1983 Wisconsin Act 27, section 1553p.

93. 1987 Senate Bill 100.

94. 144 Wis. 2d 429, 465 (1988).

95. Wis. Const. art. V, § 10 (1) (c) (April 1990). The measure passed by a vote of 387,068 to 252,481. Vanna White herself sent Rep. Dave Travis, a lead author of the amendment, an autographed picture to commemorate its passage. "Vanna takes note of veto bill," *Capital Times*, April 30, 1990.

96. Matt Pommer, "Governor loses letter veto power," *Capital Times*, April 4, 1990; Craig Gilbert, "Voters end governor's letter veto," *Milwaukee Journal Sentinel*, April 4, 1990.

97. 1993 Wisconsin Act 16.

budget bill,[98] Governor Thompson used the partial veto to write down a lower bonding authorization amount, but the court, in *Risser v. Klauser*, held that the governor could partially veto only appropriations with a write-down veto, not any other amounts.

Frankenstein veto

Governors Tommy Thompson, Scott McCallum, and James Doyle aggressively used a type of editing veto in ways unimagined by their predecessors, altering appropriation bills not only to change the intent of bills passed by the legislature but also to embark on entirely new policy directions that had not even been considered by the legislature.

For example, in the 2005 biennial budget,[99] Governor Doyle 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.[100] This practice of using the partial veto to create a new sentence by combining parts of two or more sentences, and sometimes unrelated sentences, was dubbed the "Frankenstein veto."

Largely in response to Governor Doyle's aggressive use of the editing veto in the 2005 biennial budget, the 2005 legislature, in a bipartisan vote, adopted 2005 Senate Joint Resolution 33, which proposed amending the constitution to ban the Frankenstein veto. Specifically, the amendment would prohibit the governor from creating "a new sentence by combining parts of two or more sentences of the enrolled bill."[101] The 2007 legislature adopted the proposal on second consideration almost unanimously, and in April 2008, 71 percent of voters approved the amendment.[102]

As a result of the amendment, the governor can no longer create a new sentence from other sentences. However, the governor can still use the editing veto to remove entire sentences or words within sentences, even if doing so changes the meaning of a paragraph or sentence. Days after the adoption of the 2008 amendment, the *Capital Times* published an editorial stating that "governors of Wisconsin retain the most abusive veto powers in the nation. And do not doubt that the abuses will continue . . . A cutesy campaign has led people to believe the 'Frankenstein' veto has been slain. But that is not the case."[103]

When and how can the governor partially veto a bill?

Wisconsin case law on the partial veto power provides fairly clear direction on when the

98. 1997 Wisconsin Act 27.
99. 2005 Wisconsin Act 25.
100. 2005 Wisconsin Act 25, section 9148 (4f).
101. Wis. Const. art. V, § 10 (1) (c) (April 2008).
102. The measure passed in a 575,582 to 239,613 vote.
103. "Sham veto amendment not reform," *Capital Tim*es, April 6, 2008.

governor can partially veto a bill, how the governor can partially veto a bill, and what the test is for determining whether the partial veto is valid.

First, the governor may partially veto only a bill that appropriates moneys. The *Finnegan* test, as affirmed by *Risser v. Klauser*, holds that an appropriation involves the expenditure or setting aside of public moneys for a particular purpose and an appropriation must specifically determine "the amount, manner, and purpose of the various items of expenditure."[104] A bill that raises revenue, even if it increases expenditures, is not an appropriation bill if the revenues are deposited into an existing continuing appropriation. Similarly, a provision in a bill setting bonding limits is not an appropriation, even if the bonding levels affect expenditures from current law appropriations. The courts are consistent in this regard. A bill is not an appropriation bill if it has an "indirect bearing upon the appropriation of public moneys"[105] or tangentially "affects an appropriation."[106] An appropriation bill must "within its four corners contain an appropriation."[107] This is a clear rule. The best way to determine if a bill is an appropriation bill is if the bill creates or authorizes the expenditure of moneys from a chapter 20 appropriation provision.

Second, if the bill is an appropriation bill, the governor may veto any word in the bill, including action phrases and bill section titles; may veto any digit in the bill, including striking a "0" from a number to reduce, say, $1,000,000 to $100,000; and may reduce any appropriation amount by writing in a lower amount. But there are limits. No governor has ever partially vetoed current law text or numbers in an appropriation bill. (Current law appears in a bill if the bill deletes or adds language to current law to show how current law is affected.)[108] Instead, the governor may partially veto only newly created or amended text or numbers that appear in a bill. The 1990 amendment prohibited the governor from striking letters to form new words. In addition, the 2008 amendment curtailed significantly the governor's partial veto power by prohibiting the governor from creating "a new sentence by combining parts of 2 or more sentences of the enrolled bill."[109] As a result, the governor may veto only new words or numbers within a sentence or may veto new sentences in a bill but may not link the words or numbers across sentences to form a new sentence.

Finally, even if the governor has followed the above-mentioned procedures, there are two other requirements for determining whether a partial veto is valid. One is that the part of the bill that remains after a partial veto must be germane to the part that was vetoed. For example, a partial veto of a bill section that applies only to the Department

104. 220 Wis. 134, 148 (1936).
105. 220 Wis. 134, 148 (1936).
106. 207 Wis. 2d 176, 196 (1997).
107. 220 Wis. 134, 147 (1936).
108. Joint Rule 52 (5) requires that the full text of amended provisions in current law be displayed in bills.
109. Wis. Const. art. V, § 10 (1) (c) (April 2008).

of Revenue will most likely not be valid if the veto would make the section apply only, say, to the Department of Corrections. This limits the ability of a governor to strike just any word in a sentence. This germaneness requirement has "the force of law."[110] Another requirement is that the partial veto must result in "a complete and workable law."[111] There is no court test for what constitutes a complete and workable law. This issue will therefore have to be determined on a case-by-case basis. But the court has advised that what language remains after a valid partial veto does not have to be grammatically correct or even have proper syntax, nor that it be perfectly clear. In fact, under *Wisconsin Senate*, a vague law resulting from a partial veto can still be complete and workable.[112]

Partial veto rules

Together, court decisions, past practices of governors, and legal advice of Legislative Reference Bureau attorneys have produced a set of rules to guide governors in their exercise of the partial veto power on appropriation bills. The rules are as follows:

1. A veto of stricken text restores current law.
2. A veto of plain text or scored text wipes out the text.
3. The governor may not veto current law.
4. The governor may veto individual digits but may not create new words by rejecting individual letters.
5. The governor may not create a new sentence by combining parts of two or more sentences.
6. The governor may reduce the amount of an appropriation by writing in a smaller amount, but may not reduce other numbers, such as bonding authorizations, by a write-down veto.
7. A partial veto must leave a "complete, entire, and workable law."
8. The law that remains after vetoed provisions are removed must be germane to the topic of the vetoed provisions.

The past and future of the governor's partial veto power

The Wisconsin Constitution establishes a framework in which the different branches of government are assigned not only separate powers, but also shared powers. The partial veto power gives the governor a role in the lawmaking process by granting the governor the power to reject legislation in its entirety. The partial veto power gives the governor an even more important role in the lawmaking process by allowing the governor the ability

110. 144 Wis. 2d 429, 452–53 (1988).
111. 71 Wis. 2d 118, 130 (1976).
112. 144 Wis. 2d 429, 462–63 (1988).

to approve legislation that may be required for the operation of state government, but also to reject parts of that legislation that the governor objects to on policy or fiscal grounds.

In this way, governors are not forced to accept or reject in its entirety legislation that funds state government operations and programs. Instead, the partial veto enables the governor to pick and choose, as it were, the proper level of funding for state government operations and programs, as well as alter the operations and programs themselves. This shared role in the lawmaking process is an invitation for conflict.

The evolution of the partial veto is marked by three key trends. First, the courts reimagined the partial veto in ways not intended by the legislature. By all accounts, the legislature created the partial veto to be similar to, if not the same as, the item veto possessed by a large majority of states. In its early cases, however, the court distinguished the partial veto from the item veto and held that item veto jurisprudence from other states would not define the boundaries of the partial veto. The partial veto was unique to Wisconsin. Judicial interpretation of the partial veto power accommodated the governor, as the court over the span of six decades read the partial veto to allow the governor to reject any text, digits, and punctuation in an appropriation bill, including the very letters in the words themselves. There is no evidence that the partial veto power was originally intended to allow the governor to fashion new words or sentences or to embark on new policy directions not intended by the legislature. The partial veto was intended to be a check on the legislature, not a means for the governor to rewrite legislation. The partial veto evolved with court assistance to become a powerful, policymaking instrument.

Second, governors used the partial veto to expand their role in the lawmaking process. They did this incrementally, however. They initially vetoed non-appropriation text in appropriation bills and then tried to partially veto bills that were not appropriation bills. Governors struck words in appropriation bills to reject policy choices of the legislature and then strategically removed words to create new policies, either not intended or that were expressly rejected by the legislature. Governors grew more creative with the partial veto. In the 1930s, governors partially vetoed paragraphs and individual sentences; in the 1960s, governors partially vetoed parts of sentences and figures; and then in the 1980s, governors partially vetoed individual letters in words. The frequency of partial vetoes also increased, as shown in table 1. The partial veto was seldom used by the governor from the mid-1930s until the late 1960s. But beginning in the early 1970s, governors increased their deployment of the partial veto to the point where it is now expected that the governor will partially veto appropriation bills to accomplish policy or fiscal goals. Governors reinvented the partial veto to become a policymaking tool, limited only by the words and numbers on the pages of an appropriation bill and the creative imagination of the governor to fashion new law.

Finally, the legislature contested the governor's use of the partial veto power when

its exercise gave the governor too intrusive of a role in the lawmaking process. Legislators challenged the constitutionality of the Vanna White and write-down partial vetoes. Although legislators were not successful in convincing the court to eliminate the Vanna White veto, they were able to limit the governor's write-down partial veto power. The 1990 and 2008 constitutional amendments are also examples of when the legislature fought back. As noted earlier, the 1990 amendment was a quick response to Governors Earl and Thompson and their partially vetoing letters in words to create new words, especially when the court in 1988 upheld this practice. The 2008 amendment was a reaction to Governor Doyle's aggressive use of the partial veto in the 2005 biennial budget bill. The history of the partial veto shows that the legislature will respond to the governor.

Litigation and the constitutional amendment process are two ways the legislature can limit the reach of the partial veto. But the success of these routes depends on convincing outside actors—the courts and the public—of the wisdom of containing the governor's partial veto power. There is another way for the legislature to rein in the partial veto, a way entirely under its own control, and that is to limit inclusion of non-appropriation text in appropriation bills. The constitution gives the governor partial veto power over appropriation bills, but the constitution also gives the legislature the power to decide what is included in an appropriation bill. The legislature could choose to keep policy items out of appropriation bills.

In fact, courts have advised the legislature to do this. In *Risser v. Thompson*, the only federal appellate decision on the partial veto, the court noted that "it is true that the present governor frequently exercises his partial veto power on nonappropriation items." But the court observed that this "is because the legislature chooses . . . to attach substantive provisions as riders to the omnibus appropriation bill." The court continued: "If the legislature stops doing this, the governor's 'creative' veto power will be limited to appropriations matters."[113] This advice was also tendered in *Wisconsin Senate* as a way to limit the governor's partial veto power. As the court put it, "the solution is obvious and simple: Keep the legislature's internally generated initiatives out of the budget bill."[114] ■

113. 930 F.2d 549, 552 (1991).
114. 144 Wis. 2d 429, 464 (1988).

Appendix

Table 1. **Partial vetoes in executive budget bills**

Session	Bill	Law	Number of items vetoed[1]	Senate/Assembly Journal reference
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	1	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[2]	SJ p. 2162
	AB-1610	Ch. 215	8	AJ p. 4529
1973	AB-300	Ch. 90	38	AJ p. 2409
	AB-1[3]	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. 3421
1981	AB-66	Ch. 20	121	AJ p. 895
	SB-1[4]	Ch. 93	10	SJ p. 1196
	SB-783	Ch. 317	23	SJ p. 2085
1983	SB-83	Act 27	70	SJ p. 276
1985	AB-85	Act 29	78	AJ p. 296

Pet. Ex. F

Table 1. **Partial vetoes in executive budget bills,** continued

Session	Bill	Law	Number of items vetoed[1]	Senate/Assembly Journal reference
	SB-1[5]	Act 120	1	SJ p. 585
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. 966
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[6]	Act 109	72	AJ p. 894
2003	SB-44	Act 33	131	SJ p. 277
2005	AB-100	Act 25	139	AJ p. 374
2007	SB-40	Act 20	33	SJ p. 373
	AB-1[7]	Act 226	8	AJ p. 792
2009	SB-62	Act 2	0	—
	AB-75	Act 28	81	AJ p. 298
2011	AB-11[8]	Act 10	0	—
	SB-12[8]	Act 13	0	—
	AB-148	Act 27	0	—
	AB-40	Act 32	50	AJ p. 413
2013	AB-40	Act 20	57	AJ p. 253
2015	SB-21	Act 55	104	SJ p. 329
2017	AB-64	Act 59	98	AJ p. 421

Note: This table includes biennial budget acts, budget review acts, budget adjustment acts, annual budget acts, and the 1995 transportation budget act. AJ: Assembly Journal; SJ: Senate Journal.

1. As listed in the governor's veto message. 2. Numerous "technical changes" made by the governor are counted as one partial veto. 3. April 1974 Special Session. 4. November 1981 Special Session. 5. January 1986 Special Session. 6. January 2002 Special Session. 7. March 2008 Special Session. 8. January 2011 Special Session.

Source: Senate and Assembly Journals.

Pet. Ex. F

Table 2. **Executive partial vetoes**

Session	Bills		Biennial budget bills	
	Partially vetoed	With veto overrides	Partial vetoes[1]	Vetoes overridden
1931	2	—	12	—
1933	1	—	12	—
1935	4	—	—	—
1937	1	—	—	—
1939	4	—	1	—
1941	1	—	1	—
1943	1	1	—	—
1945	2	1	1	—
1947	1	—	1	—
1949	2	1	—	—
1951	—	—	—	—
1953	4[2]	—	2	—
1955	—	—	—	—
1957	3	—	2	—
1959	1	—	—	—
1961	3	—	2	—
1963	1	—	—	—
1965	4	—	1	—
1967	5	—	—	—
1969	11	—	27	—
1971	8	—	12[3]	—
1973	18	3	38	2
1975	22	4	42	5
1977	16	3	67	21
1979	9	2	45	1
1981	11	1	121[4]	—
1983	11	1	70	6
1985	7	1	78	2
1987	20	—	290	—
1989	28	—	208	—
1991	13	—	457	—
1993	24	—	78	—
1995	21	—	112	—
1997	8	—	152	—
1999	10	—	255	—

Pet. Ex. F

Table 2. **Executive partial vetoes,** continued

Session	Bills		Biennial budget bills	
	Partially vetoed	With veto overrides	Partial vetoes[1]	Vetoes overridden
2001	3	—	315	—
2003	10	—	131	—
2005	2	—	139	—
2007	4	—	33	—
2009	5	—	81	—
2011	3	—	50	—
2013	4	—	57	—
2015	5	—	104	—
2017	4	—	98	—

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, of the 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.

—represents zero

1. As listed in the governor's veto message. 2. 1953 AB-141, partially vetoed in two separate sections by separate veto messages, is counted as one. 3. Numerous "technical changes" made by the governor are counted as one partial veto. 4. Attorney general ruled several vetoes "ineffective" because the governor failed to express his objections (see Opinions of the Attorney General, 70, 189).

Source: Senate and Assembly Journals.

Table 3. **Legislative proposals to amend the partial veto**

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.

Pet. Ex. F

Table 3. **Legislative proposals to amend the partial veto,** continued

Session	Joint resolution	Subject	Final disposition
1969 (cont.)	AJR-56	Limit governor's partial veto authority to disapproval or reduction of an appropriation. (1st Consideration)	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).
	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)	Prevent 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 constitute "a complete and workable law" that is "germane to the subject of the legislative enactment." (1st Consideration)	Failed to pass.

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Table 3. **Legislative proposals to amend the partial veto,** continued

Session	Joint resolution	Subject	Final disposition
1991 (cont.)	AJR-78	Prevent 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 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 governor's partial veto power by requiring 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.
2003	AJR-77	Prevent governor from increasing the dollar amount of an appropriation and from approving any law that the legislature did not authorize as part of the enrolled bill. (1st Consideration)	Failed to pass.
2005	SJR-33 (Enrolled JR-46)	Prevent governor from creating new sentences by combing parts of two or more sentences of the enrolled bill. (1st Consideration)	Passed Senate (23–10); Assembly (72–24–2).
	AJR-52	Same as 2005 SJR-33.	Failed to pass.
	SJR-35	Provide that the people may approve or reject full or partial gubernatorial vetoes by referendum. (1st Consideration)	Failed to pass.
	AJR-68 (Enrolled JR-40)	Prevent governor from partially vetoing parts of a bill section without rejecting the entire bill section. (1st Consideration)	Passed Assembly (74–25); Senate (20–12).
2007	SJR-5 (Enrolled JR-26)	Second consideration of Enrolled Joint Resolution 46.	Passed Senate (33–0); Assembly (94–1). Voters approved on April 1, 2008 (575,582–239,613).
	AJR-1	Second consideration of Enrolled Joint Resolution 46.	Passed Assembly (70–25–2); Senate failed to concur.
2009	SJR-61 (Enrolled JR-40)	Prevent governor from partially vetoing parts of a bill section without rejecting the entire bill section. (1st Consideration)	Passed Senate (21–12); Assembly (50–48).
	AJR-109	Same as 2009 SJR-61.	Failed to pass.

Table 3. **Legislative proposals to amend the partial veto,** continued

Session	Joint resolution	Subject	Final disposition
2009 (cont.)	AJR-129	Prevent governor from creating new sentences by combining parts of sentences. (1st Consideration)	Failed to pass.
2011	AJR-114	Second consideration of content of 2009 Enrolled Joint Resolution 40.	Failed to pass.
	SJR-60	Second consideration of content of 2009 Enrolled Joint Resolution 40.	Failed to pass.
2013	AJR-124	Prevent governor from partially vetoing parts of bill sections without rejecting the entire bill section. (1st Consideration)	Failed to pass.

Source: Senate and Asembly Journals.

The State of Wisconsin

LEGISLATIVE REFERENCE BUREAU
201 North, State Capitol
Madison, Wisconsin 53702

Telephone Area Code 608
Reference Section: 266-0341
Legal Section: 266-3561

Dr. H. Rupert Theobald, Chief

CONSTITUTIONAL AMENDMENTS GIVEN "FIRST CONSIDERATION" APPROVAL BY THE 1987 WISCONSIN LEGISLATURE

Informational Bulletin 89-IB-1

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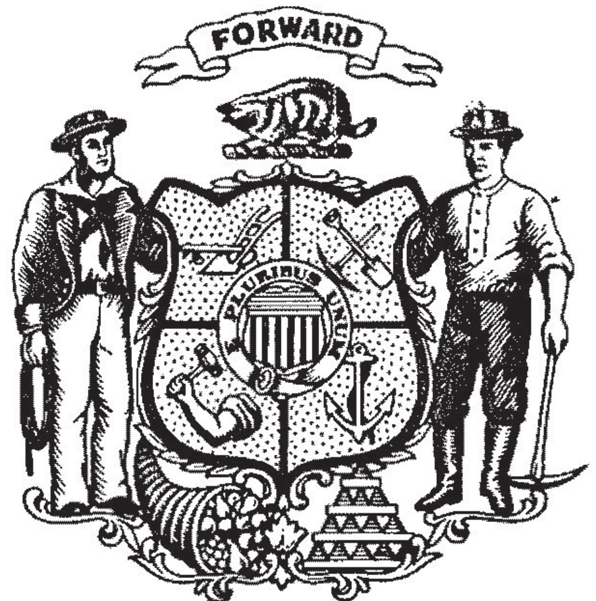

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CONSTITUTIONAL AMENDMENTS GIVEN "FIRST CONSIDERATION" APPROVAL BY THE 1987 WISCONSIN LEGISLATURE

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CONSTITUTIONAL AMENDMENTS GIVEN "FIRST CONSIDERATION" APPROVAL BY THE 1987 WISCONSIN LEGISLATURE

I. INTRODUCTION

A. Action by the 1987 Legislature

Of a total of 44 constitutional amendment proposals introduced for first consideration in the 1987 Wisconsin Legislature, only 4 were adopted. The amendment proposals adopted relate to altering the partial veto process, codifying the method of selecting county surveyors, authorizing income tax credits or refunds for property taxes or sales taxes due, and abolishing the use of the property tax for school operations.

The 4 amendment proposals adopted by the 1987 Legislature are eligible for second consideration by the 1989 Legislature and affect the following sections of the Wisconsin Constitution.

Sections Affected	Joint Resolution	Subject
Art. V, Sec. 10	SJR-71 (Enrolled JR-76)	Redefining the partial veto power of the governor
Art. VI, Sec. 4 (1), (2), (4) and (5)	SJR-53 (Enrolled JR-47)	Codifying the method in which county surveyors are selected
Art. VIII, Sec. 1	AJR-117 (Enrolled JR-74)	Authorizing income tax credits or refunds for property taxes or sales taxes due in this state
Art. VIII, Sec. 1; Art. X, Secs. 3 and 4; Art. XIV, Sec. 17	AJR-118 (Enrolled JR-75)	Abolishing the use of the property tax for school operations

B. Amendment Process

Passage by the legislature of a constitutional amendment on first consideration represents only one-third of the enactment process. Amendments proposed to the Wisconsin Constitution require adoption by 2 successive legislatures and ratification by the electorate before becoming effective. A proposed change is introduced in the legislature in the form of a joint resolution for "first consideration." If the joint resolution is adopted by both houses, a new joint resolution embodying the identical text may be introduced on "second consideration" in the following legislative session. In order for the amendment to be placed on the ballot, that legislature must approve the proposed text again without amendment. The joint resolution adopted on second consideration also specifies the wording of the ballot question or questions and sets the date for submitting the question to the people at a statewide election. Joint resolutions are not submitted to the governor for approval.

Prepared by Gary Watchke, Research Analyst.

The amendment procedure is provided by Article XII, Section 1 of the Wisconsin Constitution.

II. REDEFINING THE PARTIAL VETO POWER OF THE GOVERNOR

ART. V, Sec. 10

Amendment Proposed by 1987 SJR-71 (JR-76)

A. Analysis

1987 SJR-71 redefines the limits of the governor's power to veto appropriation bills in part. Although the governor would still have broad veto authority, including the authority to veto individual numbers to change numeric amounts and individual words to change sentences, the striking of letters to form new words would be prohibited.

The following extract is from the Legislative Reference Bureau analysis of SJR-71:

> The governor's existing power to approve "appropriation bills .... in part" was added to the Wisconsin constitution by an amendment ratified in the election of November 1930. In the recent case of *State ex rel. Wisconsin Senate et al. v. Tommy G. Thompson et al.*, 144 Wis. 2d 429, decided on June 14, 1988, the supreme court held that its prior decisions on the partial veto power .... "have ineluctably led to this decision we reach today .... that the governor has the authority to veto sections, subsections, paragraphs, sentences, words, parts of words, letters, and digits (numbers) included in an appropriation bill...."
>
> This proposal specifies 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."
>
> In addition to the substantive change, the proposed amendment also structures the existing constitutional section into subsections and paragraphs to facilitate future amendment.

B. Text

(NOTE: Scored material would be added; stricken material would be deleted.)

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

[Article V] Section 10 (1) (a) Every bill which shall have passed the legislature shall, before it becomes a law, be presented to the governor~~; if he approve, he shall sign it, but if not, he~~.

(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.

(2) (a) If the governor rejects the bill, the governor shall return ~~it~~ the bill, together with ~~his~~ the objections in writing, to ~~that~~ the house in which ~~it shall have~~ the bill originated~~, who~~. The house of origin shall enter the objections at large upon the journal and proceed to reconsider ~~it. 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~~ the bill. If, after such reconsideration, two-thirds of the members present ~~shall~~ agree to pass the bill~~, or the part of the bill objected to~~ notwithstanding the objections of the governor, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present it shall become ~~a~~ law. ~~But in~~

(b) The rejected part of an appropriation bill, together with the governor's objections in writing, shall be returned to the house in which the bill originated. The house of origin shall enter the objections at large upon the journal and proceed to reconsider the rejected part of the appropriation bill. If, after such reconsideration, two-thirds of the members present agree to approve the rejected part notwithstanding the objections of the governor, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present the rejected part shall become law.

(c) In all such cases the votes of both houses shall be determined by ~~yeas~~ ayes and ~~nays~~ noes, and the names of the members voting for or against passage of the bill or the rejected part of the bill ~~objected to,~~

notwithstanding the objections of the governor shall be entered on the journal of each house respectively. ~~If any~~

(3) Any bill ~~shall~~ not ~~be~~ returned by the governor within ~~six~~ 6 days (Sundays excepted) after it shall have been presented to ~~him, the same~~ the governor shall be a law unless the legislature ~~shall~~, by ~~their~~ final adjournment, ~~prevent its~~ prevents the bill's return, in which case it shall not be ~~a~~ law.

C. Background

1. Origin of the Governor's Partial Veto Power

As early as 1913, Wisconsin Governor Francis E. McGovern urged the legislature to adopt a joint resolution amending the constitution to grant the executive the power to veto "separate" items in appropriation bills. In a special message to the legislature in August 1913, Governor McGovern noted that the practice of enacting omnibus appropriation bills (which was begun in the 1911 session and continued by the 1913 Legislature) had the effect of significantly weakening the executive veto. McGovern told the legislature that the end result was the removal of the governor from the budget process.

The 1927 and 1929 Legislatures adopted joint resolutions containing language giving the governor authority to veto "parts" of appropriation bills. The drafting record for the 1927 resolution (SJR-35) indicated that Senator William Titus requested the Reference Library to draft a joint 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."

There were several arguments advanced in support of, or opposition to, the proposed constitutional amendment prior to its submission to the electorate at the November 4, 1930 election. Proponents of the amendment argued that changes enacted by the 1929 Legislature which required the governor to submit a single budget bill to the legislature made the executive item veto authority mandatory. Senator Thomas Duncan, a primary supporter of the resolution, noted that under the newly adopted budget system, 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. Thus, Duncan argued that the proposal to grant the governor power to veto separate appropriation items "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. La Follette claimed that the amendment "smacked of dictatorship" and would result in the centralization of too much power in the hands of the executive:

> The effect of the amendment is to give the chief executive additional power in the general conduct and control of government. It is another step in the concentration of power in the executive office.... The whole tendency of the past two decades has been towards over concentration of authority. The powers of the several states over their own domestic matters have been increasingly undermined and concentrated in Washington. The powers of the legislatures and of congress have been encroached upon by the executive.

At the November 1930 general election, Section 10 of Article V of the Wisconsin Constitution was amended to permit the governor to approve appropriation bills in part. The original Constitution of 1848 made no mention of appropriation measures in

describing the governor's veto powers. Special treatment of appropriation bills was added by an amendment proposed by Joint Resolution 37 of 1927, approved a second time by 1929 Joint Resolution 43 and ratified by the electorate in November 1930 by a vote of 252,655 "for" and 153,703 "against." The amendment added 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.

The ballot question considered by the electorate was "Shall the constitutional amendment proposed by Joint Resolution No. 43 of 1929, be ratified so as to authorize the Governor to approve appropriation bills in part and to veto them in part?" In the September 13, 1930, NOTICE OF ELECTION, Secretary of State Theodore Dammann explained the ballot question as follows: "If this amendment is ratified the Governor will be authorized to approve appropriation bills in part and to veto them in part."

At the time Wisconsin approved the amendment, 37 other 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."

2. Expanded Use of the Partial Veto by Wisconsin Governors

Wisconsin governors were slow to use their new partial veto power and showed no tendency to interpret the constitutional phase "in part" broadly. In the first partial veto, exercised in 1931, the governor vetoed parts of a bill as small as a statute paragraph. One governor vetoed 2 sentences of a session law in 1935; another, one sentence in 2 separate statute subsections in 1953. In 1961, the governor vetoed a portion of a sentence in a statute section. In 1965, the governor deleted a complete multidigit figure appearing in an appropriation bill.

By authorizing the approval and veto of appropriation bills in part, it appears the 1930 constitutional amendment meant to provide a rational alternative to the all-or-nothing choice of the traditional veto. Particularly, the term "part" permits a Wisconsin governor to reach not only appropriation items, but also "riders" — issues of public policy that might be attached to an appropriation bill, sometimes without any relation to appropriations. Since 1971, however, governors have applied the partial veto more aggressively and their "creativity" in editing has led to concern that a development designed to restore the balance of power has gone too far.

In 1971, Governor Patrick J. Lucey became the first governor to apply the partial veto in an unconventional manner. Although previous governors used the partial veto to modify legislative policy or increase as well as decrease appropriations, none was as inventive in his use of the power as Governor Lucey. Governor Lucey was the first to use the partial veto to remove a single digit from an appropriation — thereby inventing the "digit veto." Governor Lucey also began to use the partial veto to accomplish detailed editing of statutory language.

In 1977, Acting Governor Martin J. Schreiber further refined and expanded the editing feature with a partial veto that not merely modified the intent of the legislature, but that changed the text so as to enact an alternative expressly rejected by the legislature.

In 1981, Governor Lee Sherman Dreyfus used both the "digit veto" and the "editing veto," and used them in a more extensive manner.

In 1983, Governor Anthony S. Earl continued the use of the "digit veto" and "editing veto," and invented a new precedent-setting version of the partial veto — the "pick-a-letter

veto" (the selective vetoing of letters to form a new word, or of digits to form a new number).

In 1987, Governor Tommy G. Thompson used all 3: the "digit," "editing" and "pick-a-letter" aspects of the partial veto.

For a brief overview of the use of the partial veto by recent governors, as well as 2 tables listing the number of partial vetoes of executive budget bills and executive vetoes from 1931-1987, see "The Partial Veto in Wisconsin — An Update," Revised August 1988, (pages 4-8), IB-87-3, Legislative Reference Bureau. Copies are available from the Legislative Reference Bureau.

3. The Legislature Responds

a. Reactions to Partial Veto Use, 1935-1985 Sessions — Since the partial veto authority was incorporated into the Wisconsin Constitution in 1930, 16 joint resolutions on first consideration and one joint resolution on second consideration have been introduced in the legislature to either clarify or limit the governor's power to veto appropriation bills in part. None of the attempts has been successful; altering the partial veto mechanism necessitates a constitutional amendment which requires 2 successive legislatures to approve the amendment.

Other than the adoption of 1987 SJR-71, the only other proposal that received adoption on first consideration was 1979 SJR-7. 1981 SJR-4, the joint resolution for the second consideration of 1979 SJR-7, was passed by the Senate but failed in the Assembly.

b. Reactions to Partial Veto Use, 1987-88 Session — On September 17, 1987, the Wisconsin Legislature petitioned the Wisconsin Supreme Court to take original jurisdiction in the legislature's challenge of Governor Tommy Thompson's 290 partial vetoes of the budget bill. The legislature, via their petition, claimed that Governor Thompson took the partial veto both beyond its intent and exceeded his constitutional authority as chief executive.

On June 14, 1988, the supreme court rendered its decision in *State ex rel. Wisconsin Senate v. Thompson*, 144 Wis. 2d 429. The decision upheld Governor Tommy G. Thompson's partial vetoes of the 1987-89 executive budget act.

c. Interpretation of the Governor's Partial Veto Authority — The June 1988 decision by the Wisconsin Supreme Court marked the sixth time that the court has upheld the governor's partial veto authority. With each decision, the court has broadened its interpretation of the language of Article V, Section 10, concerning the authority of the governor to veto parts of appropriation bills. The 1988 decision marked the first time that the court has approved the governor's use of the partial veto to create new words and new sentences in an appropriation bill. The court held that the constitution implies only 2 limitations on the partial veto power: 1) the part of an appropriation bill approved by the governor must be a complete, entire and workable law; and 2) the law resulting from a partial veto must be a law that is germane to the topic or subject matter of the appropriation bill passed by the legislature.

For a more complete discussion of these issues, see "The Partial Veto in Wisconsin — An Update," Revised August 1988, (pages 12-19), IB-87-3, Legislative Reference Bureau.

4. The Partial Veto in the 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 other states.

According to the Council of State Governments' 1988-89 *The Book of the States*, only the governor of North Carolina does not have any veto authority. Of the 49 states which provide for a gubernatorial veto, 43 also allow the governor to item veto appropriation bills, while 6 states do not (Indiana, Maine, Nevada, New Hampshire, Rhode Island and Vermont). Of the 43 states with item veto authority, 24 restrict its use to "items of appropriations;" 19 (including Wisconsin) also permit the governor to veto language contained in appropriation bills; and 12 allow the governor to reduce amounts in appropriation bills (Hawaii limits the governor to reducing items in executive branch appropriation measures only).

For additional information on the item veto in other states (including pertinent constitutional citations), see Table 3 on pages 11 and 12 of the Legislative Reference Bureau's Informational Bulletin 87-3, Revised August 1988, "The Partial Veto in Wisconsin — An Update."

D. Legislative Action

1987 Senate Joint Resolution 71 was introduced on June 30, 1988, by the Committee on Senate Organization. The Senate Committee on Judiciary and Consumer Affairs reported adoption of the resolution without recommendation by a vote of 3 to 3 (June 30). Senate Amendment 1, introduced by Senator Davis, provided that the governor may reject the amount of any appropriation made in the enrolled bill and write in a lesser amount; the amendment was rejected. The Senate adopted the joint resolution by a vote of 18 to 14 (June 30, 1988; Senate Journal, p. 920).

Assembly Amendment 1, introduced by Representative Loftus, *et al.*, replaced the phrase "letters in the words of" with "letters from words, or create a new sentence by rejecting individual words, provided by"; the amendment was laid on the table. Assembly Amendment 2, introduced by Representative Underheim, provided that the governor "not delete less than a complete legislative concept"; this amendment was also laid on the table. The Assembly refused to refer the resolution to the Committee on Rules (ayes — 38, noes — 51). The Assembly concurred in the resolution by a vote of 55 to 35 (June 30, 1988; Assembly Journal, p. 1152).

III. CODIFYING THE METHOD OF SELECTING COUNTY SURVEYORS

ART. VI, Sec. 4

Amendment Proposed by 1987 SJR-53 (JR-47)

A. Analysis

1987 SJR-53 makes changes in the constitutional text concerning the county office of surveyor, including the option of having the county surveyor appointed by the county board or elected by the voters. The office of surveyor exists only in counties of less than 500,000 population; in Milwaukee County, the office was abolished by a constitutional amendment ratified in April 1965.

The following extract is taken from the Legislative Reference Bureau analysis of 1987 SJR-53:

> This constitutional amendment, proposed to the 1987 legislature on "first consideration", makes the following changes in the county office of surveyor:
>
> *Appointive office.* Subject to procedures established by law and coinciding with the end of a term, the county board of any county may convert the office of surveyor to an office filled by appointment by the county board, assign additional duties to the surveyor or assign the duties of that office to any other appointive county office.

Multicounty appointive surveyor. Two or more counties with an appointive office of surveyor may establish a joint surveyor system. This is similar to the constitutional authorization for a joint appointive medical examiner system already contained in section 4 (2) of article VI of the constitution.

Vacancy or removal from office. At present, vacancies in the elected positions of county surveyor are filled by appointment by the governor. For elected surveyors, that system continues. For surveyors appointed by the county board, vacancies will be filled as provided by law. The governor continues to have the power to remove elected county surveyors for cause. For appointive county officers, including appointive surveyors, the power of removal will be exercised by the county board under procedures to be established by law.

B. Text

(NOTE: Scored material would be added; stricken material would be deleted.)

SECTION 1. Section 4 (1), (2), (4) and (5) of article VI of the constitution are amended to read:

[Article VI] Section 4. (1) ~~Sheriffs~~ Except as provided in sub. (2), sheriffs, coroners, registers of deeds, surveyors, district attorneys, and all other elected county officers except judicial officers and chief executive officers, shall be chosen by the electors of the respective counties once in every 2 years.

(2) (a) The offices of coroner and surveyor in counties having a population of 500,000 or more are abolished. Counties not having a population of 500,000 ~~shall have the option of retaining~~ may convert the elective county office of coroner ~~or instituting a~~ to an appointive medical examiner system. Two or more counties may institute a joint medical examiner system.

(b) Subject to procedures established by law and coinciding with the end of an elected surveyor's term, the county board of any county may convert the office of surveyor to an office filled by appointment by the county board, assign additional duties to the surveyor or assign the duties of that office to any other appointive county office. Two or more counties with an appointive office of surveyor may institute a joint surveyor system.

(4) (a) The governor may remove any elected county officer mentioned in this section, giving to the officer a copy of the charges and an opportunity of being heard.

(b) Any county officer appointed by the county board may be removed by the county board as provided by law.

(5) ~~All vacancies~~ (a) Any vacancy in ~~the offices~~ an elected office of sheriff, coroner, register of deeds, surveyor or district attorney shall be filled by appointment by the governor. The person appointed to fill a vacancy in a county office filled by election shall hold office only for the unexpired portion of the term to which appointed and until a successor shall be elected and qualified.

(b) Any vacancy in a county office filled by appointment by the county board shall be filled as provided by law.

SECTION 2. **Text of section 4 (1) of article VI.** If, prior to or simultaneously with the ratification by the people of the amendment proposed in this joint resolution, any other ratified amendment changes the wording of section 4 (1) of article VI of the constitution, the chief of the legislative reference bureau shall incorporate the present amendment into the text of that section so that both amendments are given effect.

SECTION 3. **Numbering of new paragraph.** The new paragraph in subsection (2) of section 4 of article VI of the constitution, created in this joint resolution, shall be designated by the next open paragraph letter in that subsection if, prior to or simultaneously with the ratification by the people of the amendment proposed in this joint resolution, any other ratified amendment has created a paragraph "(b)" of subsection (2) of section 4 of article VI of the constitution of this state. If several joint resolutions simultaneously create section 4 (2) (b) of article VI, the chief of the legislative reference bureau shall determine the sequence and the numbering.

C. Background

According to the drafting record of 1987 SJR-53, the purpose of this constitutional amendment proposal is to "explicitly allow counties to appoint county surveyors rather than elect them."

The draft was in response to a 1987 court of appeals decision, *Ripley v. Brown*, 141 Wis. 2d 447, 415 N.W. 2d 550 (Ct. App. 1987), which challenged as unconstitutional that part of,

statute Section 59.12 which permits a county board to appoint surveyors. Had the decision been allowed to stand, it would have required that all surveyors be elected.

The decision of the court of appeals was subsequently reversed by the Wisconsin Supreme Court. The supreme court held that "a county may employ a qualified person to perform the statutorily mandated duties as a surveyor. That person need not be elected"; *Ripley v. Brown*, 143 Wis. 2d 686 (1988).

Some of the following information concerning the current status of the county surveyor and the issues raised by the appellate court's decision in *Ripley v. Brown*, was extracted from a Legislative Reference Bureau (LRB) drafter's note to 1987 SJR-53. A copy of the complete 8-page note is on file at the LRB.

According to the *1987-1988 Wisconsin Blue Book*, the county office of surveyor is filled by election in 21 counties and is filled by county board appointment in 34 counties. The office does not exist in 17 counties including Milwaukee County where the office was abolished by a constitutional amendment ratified in April 1965.

1. Office Created by Statute

Although the office of county surveyor was not specifically mentioned in Article VI, Section 4 of the 1848 Wisconsin Constitution, Section 127 of the 1849 Wisconsin Statutes provided for the biennial election of county surveyors.

The LRB drafter's note contains the following comments concerning this statutory creation:

> The 1849 Wisconsin Statutes (see page 112, sec. 127) indicate that the first election of county surveyors was in 1850. The *Ripley* decision's premise that "the position of county surveyor had existed in Wisconsin as an elected county office since the state's first codification of its laws" is misleading. In addition, the 1849 Wisconsin Statutes (see page 113, sec. 137) fail to enumerate the surveyor as one of the county officers required to keep an office "at the seat of justice" in the county. This seems to indicate that the contemporaries who compiled the Wisconsin Statutes in 1849 did not consider the surveyor to be one of the traditional county officers. It is likely that the compilers of the 1849 Wisconsin Statutes considered the county surveyor to be an office created by statute, under the authority of Section 9 of Article XIII of the constitution.

2. Chapter 499, Laws of 1969

The election of county officers is governed by Section 4 of Article VI of the Wisconsin Constitution and further explained by statute Section 59.12. That statute reads, in part, as follows:

> In lieu of electing a surveyor in any county, the county board may, by resolution designate that the duties under ss. 59.60 and 59.635 be performed by any registered land surveyor employed by the county.

The above phrase was added by Chapter 499, Laws of 1969 (1969 AB-533). 1969 AB-533 was introduced by Representative Stalbaum, at the request of Richard Batterman and the Wisconsin Society of Land Surveyors. According to the *1968 Wisconsin Blue Book*, Representative Stalbaum listed "surveyor" as one of his occupations.

3. *Ripley v. Brown*, 141 Wis. 2d 447 (Court of Appeals)

On September 15, 1987, the 3rd District Court of Appeals decided the case of *Rodney W. Ripley v. John L. Brown and Washburn County*, holding unconstitutional that part of Wisconsin statute Section 59.12 which permits county board appointment of surveyors. Mr. Ripley had sued to force the Washburn County clerk to put the office of county surveyor on the 1984 ballot but the district court had dismissed his suit.

In presenting his case to the appeals court, Ripley argued that an 1882 amendment to the Wisconsin Constitution requires the election of county surveyors because they are considered "county officers" under the constitution.

The court of appeals held that, under the 1907 case of *State ex rel. Williams v. Samuelson*, 131 Wis. 499 (1907), the question of whether a surveyor had to be elected or could be appointed was not in doubt. The court concluded that the appointment provision of statute Section 59.12 is unconstitutional because Article IV, Section 4, of the Wisconsin Constitution, as interpreted by the *Samuelson* decision requires the county surveyor to be elected.

In addition to citing the *Samuelson* case on several occasions to support its decision, the court of appeals also made reference to a 1965 constitutional amendment which abolished the office of county coroner and surveyor in counties over 500,000 population. The court contended that since this change had been made by constitutional amendment, the legislature must have decided that the office of county surveyor was a constitutionally elective office, or else it would have changed the law by statute.

In response to the court's reasoning and interpretation of this 1965 constitutional amendment, the LRB drafter's note made the following observation:

> This premise is also misleading. The amendment was drafted in 1963 at the request of Rep. Frank G. Dionesopulous of Milwaukee-2 (AJR-14); an identical amendment was drafted for Rep. Mark W. Ryan of Milwaukee-5 (AJR-13). The instructions were to abolish the offices of coroner and surveyor in counties over 500,000. The coroner was one of the constitutional county officers enumerated in Section 4 of Article VI of the constitution. Abolishing the office of coroner in Milwaukee county could be accomplished only by constitutional amendment.
>
> It does not follow that abolishing the surveyor also required a constitutional amendment. Including the surveyor in the coroner amendment permitted the simultaneous treatment of both offices, and was less cumbersome than passing a special law to abolish the office of surveyor in Milwaukee county and a constitutional amendment to abolish the office of coroner in Milwaukee county.

4. *Ripley v. Brown*, 143 Wis. 2d 686 (1988)

On April 26, 1988, the Wisconsin Supreme Court decided the case of *Rodney Ripley v. John Brown and Washburn County*, ruling that county surveyors need not be elected officials. The court, in a unanimous decision, reversed the court of appeals decision that held that the Wisconsin Constitution requires elected county surveyors. Chief Justice Heffernan, author of the court's decision, stated the following: "A county may employ a qualified person to perform the statutorily mandated duties of surveyor. That person need not be elected."

The supreme court also noted that the appeals court had relied in part on an earlier decision, *State ex rel. Williams v. Samuelson*, 131 Wis. 499 (1907), that related to the office of county assessor. The 1907 decision appeared to classify the office of surveyor as among those the constitution says must be elected.

The supreme court refuted the appellate court's interpretation of the *Samuelson* case with the following:

> Thus, *Samuelson* does not support the plaintiff's contention that the statute is unconstitutional beyond a reasonable doubt. It is persuasive to the contrary. *Samuelson*, after all, is about biennial elections and only incidentally about what positions must be elective. The case rejects the superficial interpretation of art. VI, sec. 4, that "all other county officers .... shall be chosen by the electors" means, without exception, that all "officers" other than certain judicial and executive officers must be elected. "Officers," in respect to those who must be elected, is treated in *Samuelson* as a word of art embracing only those functionaries of the county whose duties embrace the exercise of governmental power. Using this analysis of the rationale of *Samuelson*, rather than the literal interpretation urged on

us by the plaintiff and used by the court of appeals, we conclude that county surveyors are not the type of political or governmental officers required to be elected under the rationale of *Samuelson*.

The court of appeals decision also pointed to the 1965 abolition of the office of surveyors in counties over 500,000 by constitutional amendment as evidence that the "legislature itself apparently believed that the office of county surveyor was a constitutionally elected office, or it would have changed the law by statute." The supreme court disagreed and stated that the analysis was not persuasive:

> First, there is no drafting record or history probative of that proposition. The court of appeals' analysis is based on speculation.
>
> Second, an analysis of the 1965 amendment reveals that the amendment also required a referendum on abolishing the office of coroner in counties of over 500,000. The office of coroner is clearly one of the constitutional offices listed in all versions of art. VI, sec. 4 and therefore a constitutional amendment was required to alter the requirement for election to that office. Thus, the presence of the coroner provision in the amendment explains fully the need for a constitutional change, and the presence of county surveyors on the referendum ballot is only incidental.
>
> Third, art. IV, sec. 23, of the Wisconsin Constitution, until amended in April of 1972, provided, "The legislature shall establish but one system of town and county government, which shall be as nearly uniform as practicable...." It appears, however, that it was the legislative intent originally to abolish by statute only the county surveyor's office in Milwaukee. Accordingly, the legislature could have initiated a constitutional amendment to make the uniformity question an unavailable ground for challenge. In addition, the legislature may have relied upon the dicta of *Samuelson* rather than upon substance. Even were we to assume that the legislature believed that under *Samuelson* a surveyor must be popularly elected does not make the view correct. We conclude that the provision of the 1965 amendment, to the extent it could be construed to have anything to do with the election of surveyors, was redundant.

In summary, the court ruled that statute Section 59.12 is constitutional, notwithstanding the *Samuelson* case and the constitutional amendment abolishing the county surveyor in counties of over 500,000 population. "*Samuelson* can be said to stand for the proposition that only county officers specifically named in the constitution and certain policy-making officers are required to be elected, and the 1965 amendment simply does not permit any conclusions regarding the constitutionality of sec. 59.12, Stats. It is substantially irrelevant."

D. Legislative Action

1987 Assembly Joint Resolution 117 was introduced on April 20, 1988, by the Committee on Assembly Organization. The Assembly adopted the resolution on a 68 to 31 vote (April 20, 1988; Assembly Journal, p. 1013).

On April 20, the resolution was referred to the Senate Committee on Aging, Banking, Commercial Credit and Taxation; on the same day the Senate withdrew the measure from committee on a 16 to 15 vote. The Senate, by a vote of 13 to 18, refused to refer the resolution to the Joint Committee on Finance (April 20). The Senate concurred in the resolution by an 18 to 13 vote (April 20, 1988; Senate Journal, p. 829).

IV. AUTHORIZING INCOME TAX CREDITS OR REFUNDS FOR PROPERTY TAXES OR SALES TAXES DUE IN THIS STATE

ART. VIII, Sec. 1

Amendment Proposed by 1987 AJR-117 (JR-74)

A. Analysis

1987 AJR-117 amends Section 1 of Article VIII of the Wisconsin Constitution, relating to state income tax credits or refunds for property or sales taxes due in this state.

The following extract is taken from the analysis to 1987 Assembly Joint Resolution 117:

This constitutional amendment, proposed to the 1987 legislature on "first consideration", permits the legislature to enact laws authorizing income tax credits or refunds for property taxes or sales taxes due in this state, subject to reasonable classification and progressive effect on the overall tax system.

In addition to the substantive change, this joint resolution also breaks the constitutional provision into subsections to facilitate future amendment and to avoid conflict with other proposed amendments to the provision which may be considered by this legislature.

As a constitutional amendment, the proposal requires adoption by 2 successive legislatures, and ratification by the people, before it can become effective. The proposed amendment is not self-executing; consequently, even after ratification no change will occur until the legislature enacts laws authorizing the credits or refunds.

B. Text

(NOTE: Scored material would be added; stricken material would be deleted.)

SECTION 1. Section 1 of article VIII of the constitution is amended to read:

[Article VIII] Section 1. The rule of taxation shall be uniform ~~but the~~ except as follows:

(1) The legislature may ~~empower~~ by law authorize cities, villages or towns to collect and return taxes on real estate located therein by optional methods.

(2) (a) Taxes shall be levied upon such real property with such classifications as to forests and minerals including or separate or severed from the land, as the legislature ~~shall prescribe~~ prescribes by law.

(b) Taxation of agricultural land and undeveloped land, both as defined by law, need not be uniform with the taxation of each other nor with the taxation of other real property.

(3) Taxation of merchants' stock-in-trade, manufacturers' materials and finished products, and livestock need not be uniform with the taxation of real property and other personal property, but the taxation of all such merchants' stock-in-trade, manufacturers' materials and finished products and livestock shall be uniform, except that the legislature may provide by law that the value thereof shall be determined on an average basis. ~~Taxes may also be imposed~~

(4) The legislature may by law impose taxes on incomes, privileges and occupations~~, which~~. Such taxes may be graduated and progressive, and reasonable exemptions may be provided.

(5) Subject to reasonable classification and to progressive effect on the tax system, the legislature may by law authorize credits or refunds for taxes due under property or sales taxes in this state from or against taxes, imposed by this state, on incomes, privileges and occupations.

C. Background

1987 AJR-117 would allow the legislature to provide income tax, privilege tax or occupational tax credits or refunds to individual taxpayers for property or sales taxes imposed on them. This form of credit or refund is indirect tax relief because the taxpayer would have to pay certain taxes but would then be granted a credit for them against other taxes.

This constitutional amendment proposal would allow tax relief programs similar to, but more widely available than, the Homestead, Farmland Preservation and school property tax credit programs currently in effect. The Farmland Preservation Program was authorized by a constitutional amendment and implemented by legislation; the Homestead Property Tax Relief Program and the school property tax credit were created by legislation only. Farmland property tax relief consists of income tax credits paid to farmers based on a formula that considers a farmer's household income and the property taxes levied on the farmer's farm. The homestead tax credit is based on the claimant's household income in relation to property taxes levied on the claimant's household or rent charged to the claimant. A review of the homestead tax relief program may be found in the next section. The school property tax program allows credits against income taxes due based on a portion of property taxes paid, up to a limit.

The indirect method of providing tax relief (credits or refunds), as opposed to giving property tax relief payments directly to local units of governments that have the authority to levy property taxes, has traditionally received strong legislative support. The Wisconsin Taxpayers Alliance, in a July 1988 publication, noted:

> State property tax relief payments to local units of governments, such as school aids, shared revenues and the credits appearing on the tax bill, are not recognized as being financed from state taxes. The legislators hope that indirect property tax relief through state checks to individual recipients will be.

1. Wisconsin's Homestead Property Tax Credit Program

In 1963, by means of the enactment of Chapters 566 and 580, Laws of 1963, Wisconsin became one of the first states to provide tax relief specifically for elderly, low-income property owners or renters. Although the program has been significantly expanded by subsequent legislation, it still represents one of only 2 state tax relief programs that make payments directly to individuals through the income tax system on the basis of property taxes owed and income. All other property tax relief programs involve payments to local units of government rather than to individuals.

Shortly after the program was established, its constitutionality was challenged in *Harvey v. Morgan*, 30 Wis. 2d 1 (1965). The petitioner alleged that the Wisconsin statute which provides property tax relief to persons over age 65 through a system of income tax credits and refunds is unconstitutional because it, "being a tax-relief measure, does not comply with the Wisconsin constitutional rule of uniformity of taxation" (Article VIII, Section 1). The suit also alleged that "the law is not uniform in that it grants a partial exemption of property taxes to some persons and not to others." The court ruled "that this enactment is a relief law in its purpose and in its operation and as such is not subject to the rule on uniform taxation."

Thus, property tax relief programs that benefit only low-income individuals are constitutional. Amendment of the state constitution in the manner proposed by this joint resolution would allow the enactment of property tax relief programs that benefit a wider range of individuals.

2. Prior Amendments to Article VIII, Section 1

1987 AJR-117 would amend Article VIII, Section 1 (the uniformity clause) of the Wisconsin Constitution. The purpose of the uniformity clause is to require that all property taxpayers be treated in a uniform manner. In other words, property taxes are to be imposed on taxable property equally, according to the value of the property and upon all taxpayers.

Article VIII, Section 1 appeared in the original 1848 Wisconsin Constitution as follows: "The rule of taxation shall be uniform, and taxes shall be levied upon such property as the legislature shall prescribe."

The uniformity clause has been amended on 5 occasions. It was initially amended in 1908 when the imposition of a progressive income tax was authorized. The second amendment, ratified by the electorate in 1927, authorized the legislature to establish special property tax classifications for forests and minerals. The resulting acts were the Woodland and Forest Crop laws. The third amendment, adopted in 1941, allowed municipalities to collect and return taxes by optional methods. This amendment enabled the legislature to enact, for example, laws authorizing municipalities to allow instalment payments of property taxes. The fourth amendment, adopted in 1961, provided that merchants' stock-in-trade, manufacturers' materials and finished products, and livestock need not be uniform with the taxation of real property and other personal property, but

must be uniform as a group. These kinds of property are now exempt from taxation. The fifth and most recent amendment, ratified in 1974, permitted nonuniform taxation of agricultural land and undeveloped land. This amendment resulted in the farmland preservation credit.

The current amendment proposal is not self-executing; consequently, even if it is ratified, no change will occur until the legislature enacts legislation authorizing the credits or refunds allowed by the amendment.

3. 1987 and 1988 Property Tax Relief Proposals

During the 1987-88 session, proposals to provide property tax relief came from both the legislature and the governor. Six bills, 1987 SB-100, SB-598, AB-677, AB-850 and 1987 November Special Session AB-1 and AB-2, would have reduced property taxes for low-income citizens and farmers by expanding the Homestead and Farmland Preservation tax credit programs. Although the bills were passed by the legislature, the measures were either vetoed or partially vetoed by the governor as being unaffordable.

In addition, 1987 SJR-51 and 1987 AJR-94, constitutional amendment proposals introduced on first consideration, would have amended the uniformity clause of the constitution by validating property tax credits for certain classes of residential property (i.e., primary personal residences and improvements to agricultural land). Senate Joint Resolution 51 was adopted in the Senate but died in the Assembly. The Assembly did not pass 1987 AJR-94.

Governor Tommy Thompson, in his January 1988 budget message, submitted his own property tax relief plan consisting of the following components:

1. A one-year freeze on local spending and property tax levies to provide immediate property tax relief.
2. Statutory limits on state and local spending and property tax levies after the freeze year to control future property tax growth.
3. Increased state school aids to reduce property taxes and decrease the reliance of schools on the property tax.
4. Arbitration should not be permitted unless an employer has submitted an offer that is less than inflation.
5. Arbitrators should also give greater weight to the private employment comparisons and to local economic conditions and the impact on property taxes.

D. Legislative Action

1987 Assembly Joint Resolution 117 was introduced on April 20, 1988, by the Committee on Assembly Organization. The Assembly adopted the resolution by a 68 to 31 vote (April 20, 1988; Assembly Journal, p. 1013).

The Senate withdrew the proposal from the Committee on Aging, Banking, Commercial Credit and Taxation by a 16 to 15 vote (April 20, 1988). A motion to refer the resolution to the Joint Committee on Finance failed by a 13 to 18 vote (April 20). The Senate concurred in the resolution by a vote of 18 to 13 (April 20, 1988; Senate Journal, p. 829).

V. ABOLISHING THE USE OF THE PROPERTY TAX, OVER A 10-YEAR PERIOD, FOR SCHOOL OPERATIONS

ART. VIII, Sec. 1; ART. X, Secs. 3 and 4; ART. XIV, Sec. 17
Amendment Proposed by 1987 AJR-118 (JR-75)

A. Analysis

1987 Assembly Joint Resolution 118 would gradually eliminate the use of the property tax for the operation of public schools.

The following extract is taken from the Legislative Reference Bureau analysis of AJR-118:

This constitutional amendment, proposed to the 1987 legislature on "first consideration", abolishes the use of the property tax for school operations in the public schools from kindergarten through high school (called "common schools" in the constitution).

The abolition will be implemented over a period of 10 school budget years. In each school district, the property tax levy for school operations (excluding capital expenditures) is frozen at the amount levied during the first school budget year which begins after ratification. For each of the 10 years following, each school district's property tax levy for operations must be reduced by at least 1/10 of the amount levied in the year in which the levy is frozen. Beginning with the 11th year, the proceeds of the property tax cannot be used for school operations.

The amendment does not affect "capital expenditures" because such expenditures are usually financed through bonding and those bonds are backed by an "irrepealable" tax; see sections 67.05 (10) and 120.12 (4) of the statutes.

The amendment is not self-executing. Upon its ratification by the people, the legislature will have to enact laws providing for the funding of public school operations. Such legislation may, but is not required to, permit continued use of the property tax to fund public school capital expenditures.

The amendment clarifies that, notwithstanding the source of funding for public school operations, each school district may determine its own curriculum "subject only to this constitution and to such enactments by the legislature, of statewide concern, as with uniformity shall affect every school district."

In addition to the substantive change, this resolution also breaks section 1 of article VIII into subsections to facilitate future amendment and to avoid conflict with other proposed amendments to that section which may be considered by this legislature.

To help offset the loss of property tax revenues, the legislature may authorize municipalities, pursuant to Article X, Section 4 of the constitution, to raise additional revenues from taxes on income, privileges and occupations.

If the legislature enacts laws that authorize municipalities to levy such additional taxes, the revenues collected must be not less than one-half of the amount received by the municipality as its share of the income of the state's "school fund" established under Section 2 of Article X of the constitution and Section 24.76 of the Wisconsin Statutes.

B. Text

(NOTE: Scored material would be added; stricken material would be deleted.)

SECTION 1. Section 1 of article VIII of the constitution is amended to read:

[Article VIII] Section 1. The rule of taxation shall be uniform ~~but the~~ except as follows:

(1) (a) Except as authorized by law for capital expenditures, the proceeds of the tax on property shall not be used to operate the common schools.

(b) The legislature may ~~empower~~ by law authorize cities, villages or towns to collect and return taxes on real estate located therein by optional methods.

(2) Taxes shall be levied upon such real property with such classifications as to forests and minerals including or separate or severed from the land, as the legislature ~~shall prescribe~~ prescribes by law. Taxation of agricultural land and undeveloped land, both as defined by law, need not be uniform with the taxation of each other nor with the taxation of other real property.

(3) Taxation of merchants' stock-in-trade, manufacturers' materials and finished products, and livestock need not be uniform with the taxation of real property and other personal property, but the taxation of all such merchants' stock-in-trade, manufacturers' materials and finished products and livestock shall be uniform, except that the legislature may provide by law that the value thereof shall be determined on an average basis. ~~Taxes may also be imposed~~

(4) The legislature may by law impose taxes on incomes, privileges and occupations~~, which~~. Such taxes may be graduated and progressive, and reasonable exemptions may be provided.

SECTION 2. Section 3 of article X of the constitution is renumbered section 3 (1) of article X.

SECTION 3. Section 3 (2) of article X of the constitution is created to read:

[Article X] Section 3 (2) School districts may determine school curriculum, subject only to this constitution and to such enactments by the legislature, of statewide concern, as with uniformity shall affect every school district.

SECTION 4. Section 4 of article X of the constitution is amended to read:

[Article X] Section 4. Each town, village and city ~~shall be required to~~, if authorized by a law enacted under section 1 (4) of article VIII, may raise by tax, annually, for the support of common schools therein, a sum not less than one-half the amount received by such town, village or city respectively for school purposes from the income of the school fund.

SECTION 5. Section 17 of article XIV of the constitution is created to read:

[Article XIV] Section 17. Section 1 (1) (a) of article VIII, as created by the 1987/1989 amendment relating to abolishing the use of the property tax for school operations, shall be implemented over a period of 10 school budget years as follows:

(1) In each school district, the property tax levy for the operation of the common schools, excluding any amount for capital expenditures, shall be frozen at the amount levied:

(a) During the 1989-90 school budget year if ratification occurs at the spring election in 1989;

(b) During the 1990-91 school budget year if ratification occurs at the spring election in 1990; or

(c) During the 1991-92 school budget year if ratification occurs at the general election in 1990.

(2) For the school budget year following the year for which the amount is frozen under sub. (1), the amount for common school operating expenses, excluding capital expenditures, shall in each school district be at least one-tenth less than the amount authorized in the year of the freeze.

(3) For each of the succeeding 9 school budget years, the amount for common school operating expenses budgeted for the current school budget year, excluding capital expenditures, shall in each school district be reduced for the succeeding school budget year by an amount not less than the required one-tenth reduction under sub. (2).

(4) Beginning with the 11th school budget year following the freeze year under sub. (1), except as authorized by law for capital expenditures, the proceeds of the tax on property shall not be used to operate the common schools.

SECTION 6. **Numbering of new section.** The new section of article XIV of the constitution, created in this joint resolution, shall be designated by the next higher open whole section number in that article if, prior to or simultaneously with the ratification by the people of the amendment proposed in this joint resolution, any other ratified amendment has created a "section 17" of article XIV of the constitution of this state.

C. Background

Property tax relief — how to ease the tax burden on Wisconsin property owners — is an issue that has received much attention from taxpayers, public officials and legislators.

In the public arena, criticism of the rising property tax burden has led such groups as the Coalition for Property Tax Reform to launch a property tax reform initiative of their own. The group has proposed the removal of vocational/technical and public school (K-12) funding from the property tax. The property tax would be replaced with increased state aid and a local income tax on a three-fourths state/one-fourth local basis.

In the legislative and executive branches of state government, a myriad of proposals have been submitted to reduce the burden of the property tax on the Wisconsin taxpayer. However, agreement within the legislature and between the executive and legislative branches on a feasible and effective property tax relief formula has been elusive.

School costs consume the major share of revenue generated by property taxes levied in the state. Statistics indicate that the burden on property taxpayers is continuing to rise despite efforts by the legislature to reduce it. According to the Legislative Audit Bureau, school costs during the last decade have increased 84% between 1977-78 and 1986-87 due largely to the growth in staff salaries and fringe benefits.

Proponents of a substantial increase in property tax relief claim that unless aid is provided soon, Wisconsin may well develop a 2-level educational system. The wealthier

districts will continue to provide necessary funding, while the poorer districts will be forced to reduce spending to the point where educational equality may be lost.

1. Cost Estimate Projections for Phasing-Out the Property Tax

The phasing-out of the property tax as a revenue source for local public schools would be a sizable undertaking. According to a July 25, 1988, Wisconsin Taxpayers Alliance memorandum, in 1987 Wisconsin property taxpayers paid about $1.5 billion in operating costs for local schools.

> Assuming the proposed constitutional amendment was fully in effect in 1987, the state would have to raise that amount [$1.5 billion] to finance loeal education. This would require a massive tax increase at the state level. For example, to finance schools through the sales tax would require the rate to increase from the current 5% to 10%. To finance through the individual income tax would require a 67% increase in collection.

In a November 1988 memorandum, the Wisconsin Legislative Fiscal Bureau provided estimates of the fiscal impact of 1987 AJR-118. The bureau stated that the major premise behind their estimates is that the state would substitute revenue from other sources in order to replace the amounts which would have been funded by the property tax. Although the bureau did not suggest any particular revenue source, the memo did list several options such as raising the general tax revenues, reallocating GPR spending, creating an alternate local revenue source for school districts or some combination thereof. The overall intent of the bureau's cost estimates is to identify the amount of revenue necessary in each fiscal year to replace the property tax for school operations.

The following table prepared by the Legislative Fiscal Bureau summarizes the fiscal effect of AJR-118 compared to the cost of maintaining state support of schools at 46.3% of school costs. The first 4 columns of figures indicate the estimated cost related to AJR-118 and the last 2 columns show the annual cost of the state maintaining its share of school costs at 46.3%, given 6.5% annual growth in expenditures. The fiscal bureau made its computations and comparisons on the assumption that the constitutional amendment could be ratified in the April 1989 spring election.

Comparison of Estimated State School Aid Under AJR-118 to Maintaining State Support at 46.3% of School Costs (Amounts in Millions of Dollars)

	Estimated Cost of AJR-118*				Estimated Cost of Maintaining 46.3%	
		Increase Over Prior Year				
Fiscal Year	State School Aid	Levy Phase-Out	Cost Growth	Total	State School Aid	Increase Over Prior Year
1988-89	$1,749				$1,749	
1989-90	1,861	$ 0	$112	$112	1,861	$112
1990-91	2,269	173	235	408	1,982	121
1991-92	2,691	173	249	422	2,111	129
1992-93	3,129	173	265	438	2,248	137
1993-94	3,585	173	283	456	2,395	147
1994-95	4,059	173	301	474	2,550	155
1995-96	4,552	173	320	493	2,716	166
1996-97	5,066	173	341	514	2,893	177
1997-98	5,602	173	363	536	3,081	188
1998-99	6,162	173	387	560	3,281	200
1999-2000	6,747	173	412	585	3,494	213

*Assumes ratification of constitutional amendment in spring election of April, 1989.

The fiscal bureau also responded to a request to examine the potential impact of AJR-118 on the general fund to determine if the costs to reduce the property tax levy for schools could be entirely funded from state tax revenues without increasing state tax rates. The bureau's response was made with certain assumptions regarding the potential growth in general fund expenditures for other programs and the potential growth in state revenues over the phasing-out period.

Taking into account one set of assumed growth figures, the bureau made the following comparison of expenditures and revenues over the 10-year period of phasing-out the property tax:

> The 8.6% annual increase in general fund revenues which would be required to: (1) replace the school levy with state funding over a ten-year period and (2) provide a 5.8% annual increase in other general fund expenditures would exceed the 6.5% average annual rate of general fund revenue growth experienced from 1980-81 to 1987-88. Based on these rates of growth, the annual amount of the revenue shortfall in fiscal year 1999-2000 would be approximately $2.9 billion when the provisions of AJR-118 are fully phased in. That amount would be equivalent to approximately 21% of the projected total general fund budget under these assumptions.

The fiscal bureau concluded its memorandum with the caveat that the memo "is intended only as an exploratory analysis of the potential range of fiscal implications of the proposed constitutional amendment."

2. Prior Constitutional Amendment Proposals

During the past 2 decades, a number of constitutional amendment proposals relating to prohibiting the use of the property tax for school purposes have been introduced in the Wisconsin Legislature. The following table lists these proposals. The proposals are similar in content except for the 3 proposals (marked with asterisks) which provide that the

elimination of the property tax as a source for funding school operations would take place in a 10-year period. In addition, a number of resolutions were introduced in the 1970s to have the Legislative Council study the elimination of the property tax as a source of public school revenue. None of the resolutions was adopted.

Recent First Consideration Constitutional Amendment Proposals To Eliminate the Use of the Property Tax for School Operations

Joint Resolution and Session	Author(s)	Final Disposition
1977 AJR-101	Reps. Kincaid and Kedrowski	Died in Assembly committee
1979 AJR-113	Rep. Kincaid, et al. and co-sponsored by Sen. Krueger, et al.	Died in Assembly committee
1981 AJR-45	Rep. Lee, et al. and co-sponsored by Sen. Flynn, et al.	Reported out of committee but received no floor action
1983 AJR-17	Rep. Czarnezki, et al. and co-sponsored by Sen. Lee, et al.	Died in Assembly committee
1985 SJR-13*	Sen. Czarnezki, et al.	Received 2 public hearings but no floor action
1985 SJR-14	Sen. Czarnezki, et al. and co-sponsored by Rep. Barrett, et al.	Adopted in Senate but died in Assembly committee
1985 AJR-4	Rep. Barrett, et al. and co-sponsored by Sen. Lee, et al.	Died in Assembly committee
1987 SJR-8*	Sen. Czarnezki, et al. and co-sponsored by Rep. Krusick, et al.	Reported favorably out of committee but received no floor action
1987 SJR-9	Sen. Czarnezki, et al. and co-sponsored by Rep. Barrett, et al.	Received a public hearing but no floor action
1987 SJR-25*	Sen. Kreul, et al. and co-sponsored by Rep. Porter, et al.	Received a public hearing but no floor action
1987 AJR-6	Rep. Krusick, et al. and co-sponsored by Sen. Czarnezki, et al.	Died in Assembly committee
1987 AJR-7	Rep. Krusick, et al, and co-sponsored by Sen. Czarnezki, et al.	Died in Assembly committee

*The elimination of the property tax as a source for school operations would be done over a 10-year period.

3. Differing Views on Replacing the Property Tax for School Operations

The discussion concerning whether or not to abolish the property tax as a source of revenue for school operations involves a number of issues in addition to finding alternative ways to finance school operations. Questions arise as to who will ultimately control schools if the state pays the costs currently borne by local schools. Will the local school board continue to exercise control over budgets, curriculum and the like? What will happen to collective bargaining negotiations? Will the locally-elected school board continue to function in the same autonomous manner if the property tax is replaced by some other revenue source?

Proponents of alternative approaches include Senator Joseph Czarnezki, the author of several joint resolutions to abolish the property tax for school operations, and the Coalition for Property Tax Reform, which has argued that public schools in Wisconsin should not be funded solely by the property tax. They have argued that elderly people

living on fixed incomes, financially troubled farmers, and other property taxpayers can no longer tolerate being the primary funding source for public schools. Others proposing alternatives to the property tax state that the financing of public schools should be the function of the state, through income taxes or sales taxes. The property tax should continue to finance such local government costs as police and fire protection, street maintenance, garbage pickup, and snow removal.

Those supporting the present system of financing public schools, such as George Tipler, former executive director of the Wisconsin Association of School Boards, claim that local control and accountability of school districts would end if all educational financing and program decisions are shifted to the state.

In a 1986 article that appeared in *Education Forward*, Barbara Meyer, former president of the Wisconsin Association of School Boards, emphasized the importance of maintaining the local tax levy to support school operations: "If local school districts are relieved of all responsibility for funding, we are likely also to lose the responsibility for operating decisions. That would not be in the best interest of students or taxpayers."

State Superintendent of Public Instruction Herbert Grover, in a December 5, 1988, *Milwaukee Sentinel* article, assessed the constitutional amendment proposal and concluded that there should not be a total pickup of local education costs; rather, the goal should be 66%. He stressed the importance of local school boards to the health of education and of the role they have played in the democratic process.

D. Legislative Action

1987 Assembly Joint Resolution 118 was introduced on April 20, 1988, by the Assembly Committee on Organization. The Assembly adopted the resolution on an 84 to 14 vote (April 20, 1988; Assembly Journal, p. 1016).

The Senate, by unanimous consent, suspended the rules and withdrew the resolution from the Senate Committee on Education so that it could be taken up immediately. The Senate concurred in the resolution on a 21 to 11 vote (April 20, 1988; Senate Journal, p. 830).

Wisconsin Briefs from the Legislative Reference Bureau

Brief 90-3 March 1990

CONSTITUTIONAL AMENDMENT TO BE CONSIDERED BY THE WISCONSIN ELECTORATE

April 3, 1990

I. INTRODUCTION

One constitutional amendment will be submitted to the Wisconsin electorate for ratification on April 3, 1990. The adopted amendment proposal would redefine the partial veto power of the governor.

The proposed amendment affects Section 10 of Article V of the Wisconsin Constitution.

Section Affected	Joint Resolution	Subject
Article V, Sec. 10	Proposed by 1987 SJR-71 (Enrolled JR-76) (1st consideration); 1989 SJR-11 (Enrolled JR-39) (2nd consideration)	Redefining the partial veto power of the governor

Amending the Wisconsin Constitution requires the adoption of a proposed amendment by 2 successive legislatures and ratification by the voters. A proposed amendment is introduced in the legislature in the form of a joint resolution. This step is called "first consideration". If the joint resolution is adopted by both houses, a new resolution embodying an identical text may be introduced on "second consideration" in the following legislature. Joint resolutions are not submitted to the governor for approval.

When a constitutional amendment is before the legislature on "second consideration", any change in the *text* approved by the preceding legislature causes the proposal to revert to "first consideration" status so that second consideration approval would then have to be given by the next legislature before the proposal could be submitted to the people for ratification (see Joint Rule 57 (2) (b)).

The decision of whether to approve a proposed constitutional amendment on second consideration is up to the legislature. If the legislature does give second consideration approval, then it must also set the date for submitting the constitutional amendment to the people for ratification, and must determine the wording of the ballot question(s).

Prepared by Gary Watchke, Research Analyst.

II. REDEFINING THE PARTIAL VETO POWER OF THE GOVERNOR

ARTICLE V, Section 10

Amendment Proposed by 1987 SJR-71 (JR-76) and 1989 SJR-11 (JR-39)

A. Ballot Question:

The question will appear on the ballot in this form:

"*Partial veto of appropriation bills.* Shall section 10 of article V of the constitution be revised, and shall an additional provision be created in that section, so that the governor's power to veto appropriation bills in part does not permit the creation of a new word formed by rejecting individual letters in the words of the bill passed by the legislature?"

B. Analysis by the Legislative Reference Bureau

The proposed amendment redefines the limits of the governor's power to veto appropriation bills in part. Although the governor would still have broad veto authority, including the authority to veto individual digits to change numeric amounts and individual words to change sentences, the striking of letters to form new words would be prohibited.

The following extract is from the Legislative Reference Bureau analysis accompanying SJR-11:

> The governor's existing power to approve "appropriation bills .... in part" was added to the Wisconsin constitution by an amendment ratified in the election of November 1930. In the recent case of *Wis. Senate v. Thompson*, 144 Wis. 2d 429, 462 (1988), the supreme court held that its prior decisions on the partial veto power .... "have ineluctably led to the decision we reach today .... that the governor has the authority to veto sections, subsections, paragraphs, sentences, words, parts of words, letters, and digits [numbers] included in an appropriation bill...."
>
> The proposed amendment specifies 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" [see proposed Section 10 (1) (c) of Article V of the constitution].
>
> In addition to the substantive change, the proposed amendment also structures Section 10 of Article V of the constitution into subsections and paragraphs to facilitate future amendment and to separate the procedure for reviewing a vetoed bill [proposed Section 10 (1) (b) and (2) (a)] from the procedure for reviewing the partial veto of an appropriation bill [proposed Section 10 (1) (b) and (2) (b)].

C. Attorney General's Explanatory Statement

Article V, section 10 of the Wisconsin Constitution allows the Governor to approve appropriation bills in whole or in part. The Governor indicates his disapproval by vetoing that part of the bill to which he objects. Wisconsin Supreme Court opinions have interpreted the present constitutional provision as allowing the Governor to veto appropriation bills in part by rejecting individual letters in the words of the bill as long as what remains after the veto is a complete, entire and workable law.

A "yes" vote on this constitutional amendment would mean that the Governor could not create a new word by rejecting individual letters of words in an appropriation bill. A "yes" vote would also make some technical changes in article V, section 10 of the Wisconsin Constitution and change that section of the constitution from one paragraph to three numbered paragraphs. A "no" vote would retain the present language of article V, section 10 the the Wisconsin Constitution as interpreted by the Wisconsin Supreme Court.

D. Text

(NOTE: Scored material would be added; stricken material would be deleted.)

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

[Article V] Section 10 (1) (a) Every bill which shall have passed the legislature shall, before it becomes a law, be presented to the governor~~; if he approve, he shall sign it, but if not, he~~.

(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.

(2) (a) If the governor rejects the bill, the governor shall return ~~it~~ the bill, together with ~~his~~ the objections in writing, to ~~that~~ the house in which ~~it shall have~~ the bill originated~~, who~~. The house of origin shall enter the objections at large upon the journal and proceed to reconsider ~~it. 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~~ the bill. If, after such reconsideration, two-thirds of the members present ~~shall~~ agree to pass the bill~~, or the part of the bill objected to~~ notwithstanding the objections of the governor, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present it shall become ~~a~~ law. ~~But in~~

(b) The rejected part of an appropriation bill, together with the governor's objections in writing, shall be returned to the house in which the bill originated. The house of origin shall enter the objections at large upon the journal and proceed to reconsider the rejected part of the appropriation bill. If, after such reconsideration, two-thirds of the members present agree to approve the rejected part notwithstanding the objections of the governor, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present the rejected part shall become law.

(c) In all such cases the votes of both houses shall be determined by ~~yeas~~ ayes and ~~nays~~ noes, and the names of the members voting for or against passage of the bill or the rejected part of the bill ~~objected to,~~ notwithstanding the objections of the governor shall be entered on the journal of each house respectively. ~~If any~~

(3) Any bill ~~shall~~ not ~~be~~ returned by the governor within ~~six~~ 6 days (Sundays excepted) after it shall have been presented to ~~him, the same~~ the governor shall be ~~a~~ law unless the legislature ~~shall~~, by ~~their~~ final adjournment, ~~prevent its~~ prevents the bill's return, in which case it shall not be ~~a~~ law.

E. Background

1. Origin of the Governor's Partial Veto Power

As early as 1913, Wisconsin Governor Francis E. McGovern urged the legislature to adopt a joint resolution amending the constitution to grant the executive the power to veto "separate" items in appropriation bills. In a special message to the legislature in August 1913, Governor McGovern noted that the practice of enacting omnibus appropriation bills (which was begun in the 1911 session and continued by the 1913 Legislature) had the effect of significantly weakening the executive veto. McGovern told the legislature that the end result was the removal of the governor from the budget process.

The 1927 and 1929 Legislatures adopted joint resolutions containing language giving the governor authority to veto "parts" of appropriation bills. The drafting record for the 1927 resolution (SJR-35) indicated that Senator William Titus requested the Legislative Reference Library to draft a joint 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".

There were several arguments advanced in support of, or opposition to, the proposed constitutional amendment prior to its submission to the electorate at the November 4, 1930, election. Proponents of the amendment argued that changes enacted by the 1929 Legislature which required the governor to submit a single budget bill to the legislature made the executive item veto authority necessary. Senator Thomas Duncan, a primary supporter of the resolution, noted that under the newly-adopted budget system, 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. Duncan argued that the proposal to grant the governor power to veto separate appropriation items "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. La Follette claimed that the amendment "smacked of dictatorship" and would result in the centralization of too much power in the hands of the executive:

> The effect of the amendment is to give the chief executive additional power in the general conduct and control of government. It is another step in the concentration of power in the executive office.... The whole tendency of the past two decades has been towards over concentration of authority. The powers of the several states over their own domestic matters have been increasingly undermined and concentrated in Washington. The powers of the legislatures and of congress have been encroached upon by the executive.

The original constitution of 1848 made no mention of appropriation measures in describing the governor's veto powers. Special treatment of appropriation bills was added at the November 1930 general election when the constitution was amended by a vote of 252,655 "for" and 153,703 "against" to permit the governor to approve appropriation bills in part. The amendment added 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.

The ballot question considered by the electorate was "Shall the constitutional amendment proposed by Joint Resolution No. 43 of 1929, be ratified so as to authorize the Governor to approve appropriation bills in part and to veto them in part?" In the September 13, 1930, NOTICE OF ELECTION, Secretary of State Theodore Dammann explained the ballot question as follows: "If this amendment is ratified the Governor will be authorized to approve appropriation bills in part and to veto them in part."

At the time Wisconsin approved the amendment, 37 other 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".

2. Expanded Use of the Partial Veto by Wisconsin Governors

By authorizing the approval and veto of appropriation bills in part, it appears the 1930 constitutional amendment meant to provide a rational alternative to the all-or-nothing choice of the traditional veto. Particularly, the term "part" permits a Wisconsin governor to reach not only appropriation items, but also "riders" — issues of public policy that might be attached to an appropriation bill, sometimes without any relation to appropriations.

Wisconsin governors were slow to use their new partial veto power and showed no tendency to interpret the constitutional phrase "in part" broadly. In the first partial veto, exercised in 1931, the governor vetoed parts of a bill as small as a statute paragraph. One governor vetoed 2 sentences of a session law in 1935; another, one sentence in 2 separate statute subsections in 1953. In 1961, the governor vetoed a portion of a sentence in a statute section. In 1965, the governor deleted a complete multidigit figure appearing in an appropriation bill.

Since 1971, however, governors have applied the partial veto more aggressively and their "creativity" in editing has led to concern that a development designed to restore the balance of power has gone too far.

In 1971, Governor Patrick J. Lucey became the first governor to apply the partial veto in an unconventional manner. Although previous governors used the partial veto to modify legislative policy or increase as well as decrease appropriations, none was as inventive in his use of the power as Governor Lucey. He was the first to use the partial veto to remove a single digit from an appropriation — thereby inventing the "digit veto". Governor Lucey also began to use the partial veto to accomplish detailed editing of statutory language.

In 1977, Acting Governor Martin J. Schreiber further refined and expanded the editing feature with a partial veto that not merely modified the intent of the legislature, but changed the text so as to enact an alternative expressly rejected by the legislature.

In 1981, Governor Lee Sherman Dreyfus used both the "digit veto" and the "editing veto" and applied them more extensively.

In 1983, Governor Anthony S. Earl continued the use of the "digit veto" and "editing veto" and invented a new precedent-setting version of the partial veto — the "pick-a-letter veto" (the selective vetoing of letters to form a new word or digits to form a new number).

In 1987, Governor Tommy G. Thompson used all 3 aspects of the partial veto: the "digit", "editing" and "pick-a-letter".

For a brief overview of the use of the partial veto by recent governors, as well as 2 tables listing the number of partial vetoes of executive budget bills and executive vetoes from 1931-1987, see "The Partial Veto in Wisconsin — An Update", Revised August 1988, IB-87-3, Legislative Reference Bureau (pages 4-8). Copies are available from the Legislative Reference Bureau.

3. The Legislature Responds

a. Reactions to Partial Veto Use, 1935-1985 Sessions — Since the partial veto authority was incorporated into the Wisconsin Constitution in 1930, the legislature has introduced 16 joint resolutions on first consideration and one joint resolution on second consideration to either clarify or limit the governor's power to veto appropriation bills in part.

Other than the adoption of 1987 SJR-71, the only other proposal that received adoption on first consideration was 1979 SJR-7. 1981 SJR-4, the joint resolution for the second consideration of 1979 SJR-7, was passed by the Senate but failed in the Assembly.

b. Reactions to Partial Veto Use, 1987-88 Session — On September 17, 1987, the legislature petitioned the Wisconsin Supreme Court to take original jurisdiction in the legislature's challenge of Governor Tommy G. Thompson's 290 partial vetoes of the budget bill. The legislature claimed that Governor Thompson not only took the partial veto beyond its intent but exceeded his constitutional authority as chief executive.

On June 14, 1988, the supreme court rendered its decision in *State ex rel. Wisconsin Senate v. Thompson*, 144 Wis. 2d 429, which upheld Governor Thompson's partial vetoes of the 1987-89 executive budget act.

c. Interpretation of the Governor's Partial Veto Authority — The June 1988 decision by the Wisconsin Supreme Court marked the sixth time that the court has upheld the governor's partial veto authority. With each decision, the court has broadened its interpretation of the language of Article V, Section 10, concerning the authority of the governor to veto parts of appropriation bills. The 1988 decision marked the first time that the court has approved the governor's use of the partial veto to create new words and new sentences in an appropriation bill. The court held that the constitution implies only 2

limitations on the partial veto power: 1) the part of an appropriation bill approved by the governor must be a complete, entire and workable law; and 2) the law resulting from a partial veto must be a law that is germane to the topic or subject matter of the appropriation bill passed by the legislature.

For a more complete discussion of these issues, see "The Partial Veto in Wisconsin — An Update" (pages 12-19).

4. The Partial Veto in the 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 other states.

According to the Council of State Governments' 1988-89 *The Book of the States*, only the governor of North Carolina does not have any veto authority. Of the 49 states which provide for a gubernatorial veto, 43 also allow the governor to item veto appropriation bills, while 6 states do not (Indiana, Maine, Nevada, New Hampshire, Rhode Island and Vermont). In the 43 states where the item veto is authorized, 24 restrict its use to "items of appropriations"; 19 (including Wisconsin) also permit the governor to veto language contained in appropriation bills; and 12 allow the governor to reduce amounts in appropriation bills. (Hawaii limits the governor to reducing items in executive branch appropriation measures only.)

For additional information on the item veto in other states (including pertinent constitutional citations), see Table 3 on pages 11-12 of "The Partial Veto in Wisconsin — An Update".

F. Legislative Action

First Consideration — 1987 Senate Joint Resolution 71 was introduced on June 30, 1988, by the Committee on Senate Organization. The Senate Committee on Judiciary and Consumer Affairs reported adoption of the resolution without recommendation by a vote of 3 to 3 (June 30). Senate Amendment 1, introduced by Senator J. Mac Davis, provided that "the governor may reject the amount of any appropriation made in the enrolled bill and write a lesser amount." The amendment was rejected. The Senate adopted the joint resolution by a vote of 18 to 14 (June 30, 1988; Senate Journal, p. 920).

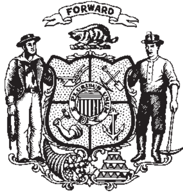
Assembly Amendment 1, introduced by Representative Thomas Loftus, *et al.*, provided the governor could not create a new word by rejecting individual "letters from words, or create a new sentence by rejecting individual words". The amendment was laid on the table. Assembly Amendment 2, introduced by Representative Gregg Underheim, provided that the governor "not delete less than a complete legislative concept." This amendment was also laid on the table. The Assembly refused to refer the resolution to the Committee on Rules (ayes — 38, noes — 51). The Assembly concurred in the resolution by a vote of 55 to 35 (June 30, 1988; A.J., p. 1152).

Second Consideration — 1989 Senate Joint Resolution 11 was introduced by Senator Fred Risser, *et al.* and cosponsored by Representative David Travis, *et al.* The Senate Committee on Judiciary and Consumer Affairs recommended adoption by a vote of 4 to 1 (January 26, 1989; S.J., p. 39). The Senate adopted the joint resolution by a vote of 22 to 11 (January 26, 1989; S.J., p. 41).

Assembly Amendment 1, introduced by Representatives Loftus and Travis, substituted the year 1990 for 1989 in the date for submission to the electorate. The amendment was adopted on a voice vote (January 26, 1989; A.J., p. 418). The Assembly refused to refer the resolution to the Committee on Elections and Constitutional Law by a vote of 38 ayes and

59 noes. The Assembly concurred in the resolution, as amended, by a vote of 64 to 32, with 2 paired (November 2, 1989; A.J., p. 436).

The Senate concurred in Assembly Amendment 1 on a voice vote (November 9, 1989; S.J., p. 524).



Wisconsin Briefs

from the Legislative Reference Bureau

Brief 08–4 March 2008

CONSTITUTIONAL AMENDMENT TO BE CONSIDERED BY WISCONSIN VOTERS, APRIL 1, 2008

Introduction

One proposal to amend the Wisconsin Constitution will be submitted to Wisconsin voters on April 1, 2008. The constitutional amendment relates to prohibiting the governor from exercising the partial veto to create new sentences.

Section Amended	Resolution	Subject
Article V, Sec. 10 (1) (c)	2005 Senate Joint Resolution 33 (Enrolled Joint Resolution 46) 2007 Senate Joint Resolution 5 (Enrolled Joint Resolution 26)	Partial veto

Amendment Process

Article XII, Section 1, of the Wisconsin Constitution requires that every constitutional amendment must be adopted by two successive legislatures and ratified by the electorate before taking effect. A proposed change is introduced in the legislature for "first consideration" in the form of a joint resolution that must pass both houses but does not have to be submitted to the governor for approval. It must be published for three months before the next election. If the resolution is adopted on first consideration, a new joint resolution embodying the identical constitutional text must be approved on "second consideration" by the next legislature. The second joint resolution specifies the wording of the ballot question and sets the referendum date. The third and final step involves submitting the question to a statewide referendum vote where a majority of those casting ballots must ratify the amendment.

PARTIAL VETO

Ballot Question

The question will appear on the ballot in this form:

> **Partial Veto.** Shall section 10 (1) (c) of article V of the constitution be amended to prohibit the governor, in exercising his or her partial veto authority, from creating a new sentence by combining parts of two or more sentences of the enrolled bill?

Proposed Language

> **Section 10 (1) (c) of article V of the constitution is created to read:** [Article V] Section 10 (1) (c) In approving an appropriation bill in part, the governor may not create a new

Prepared by Michael J. Keane, Senior Legislative Analyst **Reference Desk: (608) 266-0341**
Web Site: www.legis.state.wi.us/lrb

> 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.

Legislative Reference Bureau Analysis

The Legislative Reference Bureau analysis of 2005 Senate Joint Resolution 33 states:

> This proposed constitutional amendment, proposed to the 2005 legislature on first consideration, prohibits partial vetoes from creating new sentences by combining parts of 2 or more sentences of the enrolled bill.

Attorney General's Explanatory Statement

Attorney General J.B. Van Hollen has provided the following explanatory statement of the effect of the proposed amendment as required by Section 10.01 (2) (c), Wisconsin Statutes:

> The Governor currently has broad authority to veto any part of a bill passed by the Legislature that contains an appropriation of money, including, but not limited to, the state budget bill. At the present time, this partial veto power is limited in the text of the Constitution only to the extent of prohibiting the Governor from creating new words by eliminating individual letters in the words of the bill passed by the Legislature. Thus, this partial veto power allows the Governor to take parts of sentences in the bill passed by the Legislature and combine them to form new sentences that were not contained in the original bill.
>
> A "yes" vote would place an additional limit on the Governor's power to veto parts of an appropriation bill by prohibiting the Governor from creating a new and different sentence by combining parts of two or more sentences as they are written in the bill passed by the Legislature.
>
> A "no" vote would leave the Governor's partial veto power as it is, and continue to permit the Governor to create a new sentence by combining parts of several sentences in the bill passed by the Legislature.

Background

Prior to 1931, Wisconsin's governor only had the power to veto bills in their entirety. In November 1930, Wisconsin's voters approved a constitutional amendment providing that "appropriations bills may be approved in whole or in part by the governor . . ."

The partial veto power was used sparingly by Wisconsin's governors until the 1970s. In the 1970s, governors began to use the partial veto power more often, and in more creative ways, enabled by the constitutional language that allows appropriation bills to be approved "in part." This language is far more expansive than the provisions found in most state constitutions or statutes, which allow governors to veto "items" from appropriation bills. Wisconsin governors have maximized this power through a variety of methods, including the "digit veto," whereby appropriations are radically altered by the elimination of a single digit of a large number; the "editing veto," whereby the clear intent of a sentence can be reversed by eliminating a crucial word such as "not"; the "pick-a-letter veto," the selective deletion of letters to form new words; and the "reduction veto," in which a figure is deleted and replaced by a lower figure. Both state and federal courts have upheld these creative practices.

There have been numerous attempts over the years to curtail, eliminate, or modify the governor's partial veto authority through constitutional amendment. Only one has passed

the legislature prior to the 2007 session. This measure, approved by the voters in April 1990, prohibits the governor from creating "a new word by rejecting individual letters in the words of the enrolled bill." This amendment effectively eliminated the "pick-a-letter" veto.

Only a few proposals to modify the governor's partial veto authority have been introduced since 1991. In his veto of 2005 Assembly Bill 100, the budget bill for 2005-07, however, Governor Jim Doyle created new sentences from unassociated words and numbers, most notably in veto item A-4, section 9155 of the bill. The veto occurred on July 25, 2005. On August 19, Senate Joint Resolution 33, removing the governor's power to veto parts of sentences in order to form new sentences, was introduced.

For a detailed discussion of the partial veto in Wisconsin, see our Informational Bulletin 04-1, *The Partial Veto in Wisconsin.*

Legislative Action

2005 Senate Joint Resolution 33, the "first consideration" resolution, was introduced on August 19, 2005, by Senator Sheila Harsdorf and 45 coauthors and cosponsors. SJR-33 was adopted by the senate on October 25 and the assembly as amended by Assembly Substitute Amendment 1 on March 2, 2006. Assembly Substitute Amendment 1 prohibited the governor from rejecting any individual word in a sentence without rejecting the entire sentence. This language was identical to that of another constitutional amendment offered on first consideration as Assembly Joint Resolution 68 on November 29, 2005. The senate refused to concur in Assembly Substitute Amendment 1 by a vote of 32–0 on March 7. The assembly receded from its position on April 25. Senate Joint Resolution 33 was enrolled on May 15 as Enrolled Joint Resolution 46.

2007 Senate Joint Resolution 5, the "second consideration" resolution, was introduced on January 16, 2007, by Senator Tim Carpenter and 60 coauthors and cosponsors. It was adopted by the senate on December 11, 2007, and the assembly on January 15, 2008. It was enrolled on January 28 as Enrolled Joint Resolution 26.