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THE PARTIAL VETO POWER: LEGISLATION BY THE GOVERNOR

Timothy P. Burke*

The legislative process in Washington, as in almost all other states, is not exclusively a function of the Legislature, but rather it is a function which the Legislature shares with the Governor who is vested with the power to veto bills. Unlike the activity of the Legislature, the role played by the Governor is not highly visible and is not often the subject of attention. Yet, this relative obscurity is not indicative of the influence that the Governor exercises in the legislative process. Through his use of the partial veto power, authorized under Article III, Section 12, of the Washington Constitution and liberally construed by the Washington court, the Governor has assumed a major role in the legislative process. This brief article will describe the legal basis and extent of this role and discuss the need for its clarification and limitation;¹ a constitutional amendment will be proposed to satisfy this need.

I. THE LEGAL FRAMEWORK OF THE VETO POWER

Washington Constitution Article III, Section 12, provides:

Every act which shall have passed the legislature shall be, before it becomes a law, presented to the governor. If he approves, he shall sign

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1. As used in this article, partial veto means any veto of less than an entire bill. Section veto usually means removing a subdivision as it is actually shown in a bill, but in Washington it means removing a distinct subject matter. See text accompanying notes 4-7 *infra*. The word "items" usually refers to items in an appropriation bill, *i.e.*, "appropriation items." See Beckman, *The Item Veto Power of the Executive*, 31 TEMP. L.Q. 27 (1957). The power to veto "items" is possessed by the governors of 40 states, in addition to Washington. The states which do not grant their governors power to veto "items" are Indiana, Iowa, Maine, Nevada, New Hampshire, North Carolina, Rhode Island, Tennessee and Vermont. With few exceptions, all of the Washington Governors have viewed the word "items" as being limited to "appropriation items." Notwithstanding this history, there are many knowledgeable persons, including the present Governor and his legal staff, who construe the word "items" to mean any word, phrase, punctuation or other matter in a bill.

it; but if not, he shall return it, with his objections, to that house in which it shall have originated, which house shall enter the objections at large upon the journal and proceed to reconsider. If, after such reconsideration, two-thirds of the members present shall agree to pass the bill 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 . . . *If any bill presented to the governor contain several sections or items, he may object to one or more sections or items while approving other portions of the bill.* In such case he shall append to the bill, at the time of signing it, a statement of the section, or sections; item or items to which he objects and the reasons therefor, and the section or sections, item or items so objected to, shall not take effect unless passed over the governor's objection, as hereinbefore provided. (emphasis added)

Most features of the Governor's veto power in Washington are similar to those contained in the constitutions of the other states: The Governor must exercise the veto power within a prescribed period of time after the Legislature passes a bill; the Governor must state his objections giving rise to the veto; and the Legislature can override a gubernatorial veto only by a two-thirds vote of the members of both houses.² However, unlike all but two of the other 40 state constitutions which permit the partial veto,³ the Washington Constitution does not expressly limit the partial veto power to appropriation bills; it permits the Governor to veto "one or more sections or items while approving other portions of the bill," which literally allows any bill to be subject to a partial veto. The scope of this partial veto power has been the subject of several Washington Supreme Court cases.

The Washington Supreme Court in *Cascade Tel. Co. v. State Tax Commission*,⁴ construed the word "section" in the constitutional pro-

2. A survey of state constitutions reveals that most of these features are common to all state constitutions, with the exception of North Carolina's constitution which contains no veto provision.

3. Article IV, Section 23, of the South Carolina Constitution authorizes the Governor to veto "one or more of the items or Sections contained in any Bill" Article V, Section 15a, of the Oregon Constitution gives the Governor power to veto appropriation items and "any provision in new bills declaring an emergency without thereby affecting any other provision of such bill." All other state constitutions with the partial veto power, except Washington, expressly limit it to appropriations bills. *See, e.g., CAL. CONST.* art. IV, § 16.

4. 176 Wash. 616, 30 P.2d 976 (1934). This case was summarily relied on in a companion case. *Tacoma v. State Tax Comm'n*, 177 Wash. 604, 33 P.2d 899 (1934).

vision "to have to do more with the subject matter than with arbitrary divisions, but divisions, if properly made, tend to indicate subject matter."⁵ In upholding the Governor's veto of a portion of a bill, the court in *Cascade* noted that the vetoed language "did not modify or limit in any way or in any degree the preceding provisions, but . . . [it constitutes] a new, separate, distinct, and . . . independent provision . . ."⁶ Thus, under the rule established in *Cascade*, the governor may veto a "section" of a bill which is not a distinct subdivision so long as the vetoed portion constitutes a subject matter which is separate, distinct and independent from the remainder of the bill.⁷

The Washington Supreme Court in *State ex rel. Ruoff v. Rosellini*⁸ construed the word "items" in the constitutional provision to be broader than just appropriation items. That case arose from Governor Rosellini's veto of the phrase, "Governor, twenty-two thousand five hundred dollars;" from a section of a bill⁹ which provided salary increases for a host of elected state officials, including the Governor. The court, in upholding the veto on the ground that the phrase constituted an "item" within the purview of Article III, Section 12, stated:¹⁰

We find no merit in the contention that only an item in an appropriation bill is within the purview of the constitutional provision. Foreign states so holding have dissimilar constitutions, hence their rules are not applicable or persuasive in this case.

Ruoff stands for the proposition that the word "items" is not limited to items in an appropriation bill and provides the legal basis for the Governor's asserted power to veto individual words and phrases

5. 176 Wash. at 620, 30 P.2d at 977.

6. *Id.* at 619-20, 30 P.2d at 977.

7. The court in *Cascade* reasoned that to limit the meaning of "sections" to artificial subdivisions of bills would allow the Legislature to preclude the Governor from exercising his section veto power merely by the Legislature's skillful arrangement of bills. Based on a reading of the session law in dispute in *Cascade*, it would appear that the court's concern was valid. The session law, ch. 191, [1933] Wash. Laws, provides for an occupation tax. One key section of this bill, which defines who is liable for the tax and prescribes the tax, takes up approximately eight pages of the 1933 session laws.

The court did not discuss the inevitable difficulties which would result from its holding. Certainly, no precise method exists to determine whether a portion of a bill comprises a subject matter which is separate, distinct and independent from the remainder of the bill.

8. 55 Wn. 2d 554, 348 P.2d 971 (1960).

9. Ch. 316, § 1, [1959] Wash. Laws.

10. 55 Wn. 2d at 556, 348 P.2d at 973.

which may not fall within the *Cascade* rule.¹¹ However, *Ruoff* only presented the question of whether a monetary provision which is not an appropriation item is within the scope of "items," and thus leaves unanswered the question of whether "items" includes any nonmonetary word, phrase, punctuation or other matter within a bill.

Perhaps the correct interpretation of *Ruoff* on the meaning of "item" as used in Article III, Section 12, is that "item" is not limited to appropriation items in appropriation bills but also includes either any monetary provision in any bill or any monetary provision in any bill which by itself can or will result in the spending of money. Supporting this interpretation is the argument that if the word "items" in Section 12 includes any word, phrase, punctuation, or other matter in any bill, then the word "sections" as used in Article III, Section 12, of the Washington State Constitution is mere surplusage and the rule established in *Cascade* is meaningless.

Both *Cascade* and *Ruoff* continue the rule established in *Spokane Grain & Fuel Co. v. Lyttaker*¹² that a veto of any portion of a bill is invalid if the veto is "affirmative" as opposed to "negative." Although Washington case law fails to provide any detailed explanation as to what constitutes an "affirmative" or "negative" veto,¹³ case law from other jurisdictions has emphasized that the veto is not a creative power.¹⁴

II. QUANTITATIVE USE OF THE VETO POWER FROM 1933 THROUGH 1973

Appendix A shows the nature and extent of the vetoes exercised by governors during the period from 1933 through 1973. Prior to the 1959 Regular Session of the Legislature, the veto power was used with few

11. See Letter from the Governor's Administrative Assistant to the (then) Senate Committee on Constitution and Elections, Jan. 17, 1973, and attached memorandum.

12. 59 Wash. 76, 109 P. 316 (1910).

13. The Washington court did attempt to explain this concept in *Spokane Grain & Fuel Co. v. Lyttaker*, 59 Wash. 76, 86, 109 P. 316, 320 (1910).

14. For example, the Montana supreme court has stated: "The veto is distinctly a negative, not a creative, power. The general rule is that the Governor may not exercise any creative legislative power whatsoever. . . ." *Mills v. Porter*, 69 Mont. 325, 331, 222 P. 428, 430 (1924). Similarly, the Michigan supreme court has stated: "The veto power is a legislative function, although it is not affirmative and creative, but is strictly negative and destructive." *Wood v. State Administrative Bd.*, 255 Mich. 220, 224, 238 N.W. 16, 18 (1931).

exceptions only to veto entire bills, entire sections and entire appropriation items.¹⁵ Apparently, the governors in power prior to 1959 interpreted the word "item," as used in Article III, Section 12, to be limited to appropriation items.¹⁶

Prior to the 1957 Regular Session, governors generally vetoed more bills in their entirety than they partially vetoed.¹⁷ Beginning in 1959, a new partial veto trend began to appear when the then incumbent governor vetoed less than an entire section in four nonappropriation bills passed during the 1959 Regular and Special Sessions.¹⁸ This trend increased dramatically after the *Ruoff* decision in 1960 and reached its apex when the Governor exercised 149 partial vetoes on bills passed by the 42nd Legislature,¹⁹ 123 of which removed less than an entire section from nonappropriation bills²⁰ and 26 of which removed less than an entire item from appropriation bills.²¹ The significance of these figures is enhanced when one considers that during the entire period from 1933 to 1957 only 26 partial vetoes were exercised which removed less than an entire section from nonappropriation bills²² and only in one instance did a governor veto less than an entire appropriation item.²³

Besides the partial veto trend, the data in Appendix A support the following observations: Although the total number of bills partially and fully vetoed²⁴ increased from 1933 through 1973, the proportion of

15. See Appendix A, cols. (4), (6) & (11).

16. This comment is based on the author's review of each veto exercised by Washington's governors from 1933 to the present. The exceptions are the present Governor and his predecessor. There have been a few instances where governors in power prior to 1959 exercised the item veto power on nonappropriation bills, but these instances were so few relative to the number of bills totally or "section" vetoed by these Governors that they cannot be relied upon for the proposition that these Governors believed the item veto power extended to other than appropriation bills.

Some examples of these Governors' uses of the item veto power on nonappropriation bills are Governor Martin's partial veto of S.B. 219, WASH. H.R. JOUR. 898 (1933) (note, however, that the Governor relied on an Attorney General Opinion which stated that the constitution empowered the Governor to veto any section or item of a bill); Governor Wallgren's partial veto of H.B. 353, WASH. H.R. JOUR. 1003 (1945); Governor Langlie's partial veto of S.B. 82, WASH. S. JOUR. 1019 (1955).

17. See note 16 *supra*. From 1933 through 1956, there were 188 bills fully vetoed and 118 partially vetoed. See Appendix A, cols. (4) & (5). From 1957 through April of 1973, there were 51 bills totally vetoed and 255 partially vetoed.

18. See Appendix A, col. (8), for the 36th Legislature (1959-60).

19. *Id.*, cols. (9) & (12), for the 42d Legislature (1971-72).

20. *Id.*, col. (9).

21. *Id.*, col. (12).

22. *Id.*, col. (9), summed through the 34th Legislature (1955-56).

23. *Id.*, col. (12), summed through the 34th Legislature (1955-56).

24. *Id.*, col. (3).

total bills vetoed to total bills passed²⁵ did not increase over this period due to the increase in the number of bills passed in recent sessions.²⁶ However, both the number of partial vetoes per bill and the number of nonappropriation bills subjected to the partial veto have increased markedly since 1959. This increase in the popularity of partial vetoes is in all likelihood attributable in part to the liberal item veto power approved in *Ruoff*.

III. QUALITATIVE USE OF THE VETO POWER FROM 1933 THROUGH 1973

The Washington Governors' partial vetoes are commonly classified as either "substantive" or "corrective." Generally, those partial vetoes designed to improve the technical accuracy of bills, for example the resolution of ambiguities, are classified as "corrective." Partial vetoes which are designed to achieve substantive or policy changes are classified as "substantive."²⁷

The corrective veto often is a useful tool to enhance the quality of legislation. Traditionally, the Washington Legislature has waited until the last few days before final adjournment of a legislative session to pass the bulk of the session's legislation.²⁸ During the inevitable log jam²⁹ of these last few days, deliberation, so important to the legislative process, is nearly impossible and the technical accuracy of the

25. *Compare id.*, col. (3), with *id.*, col. (2).

26. Using the figures from Appendix A. col. (2), one can compute that the average number of bills passed during each of the Legislatures from 1933 up to 1957 was 288, and that the average number for each of the Legislatures from 1957 to present is 370.

27. Generally, these definitions have been used by both the Legislature's Legislative Council Staff and the Governor's Staff as a means to determine the number of corrective and substantive vetoes. See Legislative Council Staff Memorandum to Members of the Judiciary Committee, October 1, 1971; and Letter from the Governor's Administrative Assistant to the (then) Senate Committee on Constitution and Elections, Jan. 17, 1973, and attached memorandum. In both memoranda the authors suggest that these definitions have their shortcomings in that they are largely subjective and what may be defined as "corrective" by one person may be considered "substantive" by another.

28. This fact was made obvious to the author in reading the veto messages on bills vetoed from 1933 to present. The great bulk of these messages were dated after the Legislature had adjourned. This indicates not only that the bills were passed toward the end of the session, but also that the Legislature would not have an opportunity to override the veto until the next session.

29. On many occasions, these log jams have prevented the Legislature from adjourning the session by midnight of the last day prescribed for the session. In such cases, the Legislature customarily stays in session until late the next morning in order to complete the session's business. In *State ex rel. Distilled Spirits Institute, Inc. v.*

legislation passed tends to reflect the legislators' haste. The resulting technical errors frequently can be corrected through the Governor's partial veto power.³⁰

One of the most frequent correctable technical errors occurs in bills which amend the same law in an inconsistent or duplicative manner. For example, during the 1973 Regular Session, the Legislature passed two bills,³¹ each of which amended R.C.W. § 50.16.030 to provide for an administrative funding extension of unemployment compensation. To eliminate the duplication, the Governor vetoed a section of one of the bills.³²

Corrective vetoes have also been used to render unconstitutional laws constitutional. For example, a bill passed during the 1973 First Extraordinary Session³³ contained a section prescribing the effective date of the bill to be July 1, 1973, some 15 days earlier than the constitutionally prescribed effective date of July 16, 1973.³⁴ The Governor corrected the bill to make it constitutional.³⁵

Finally, corrective vetoes have often been used to resolve ambiguities in bills. For example, during the 1971 First Extraordinary Session, the Legislature passed two bills relating to drugs. One bill³⁶ repealed existing laws defining "narcotic drugs" and "dangerous drugs"

Kinnear, 80 Wn. 2d 175, 492 P.2d 1012 (1972), the Washington court eliminated one of the causes of log jams by holding that no deadline exists for the adjournment of a special session.

30. It can be argued that the Governor's use of corrective vetoes has created a climate in the Legislature which to some degree dissuades the Legislature from correcting its mistakes. Given the scheduling and time problems which have traditionally plagued the Legislature, legislators frequently are reluctant to slow the progress of a bill by amending it, especially when they know that the Governor can accomplish the amendment by his use of the partial veto. If this partial veto power did not exist, then it would seem that legislators would feel compelled to spend more time reviewing and perfecting bills.

31. H.B. 436, ch. 73, § 5 [1973] Wash. Laws, and S.B. 2618, ch. 6, § 1, [1973] Wash. Laws.

32. See Governor Evans' veto message on H.B. 436, ch. 73, § 5, [1973] Wash. Laws.

33. S.B. 2054, ch. 36, [1973] Wash. Laws 1st Ex. Sess.

34. WASH. CONST. art. II, § 41 (amend. 26), provides that "[n]o . . . law . . . shall take effect until ninety days after the adjournment of the session at which it was enacted."

35. See Governor Evans' veto message on S.B. 2054, ch. 36, [1973] Wash. Laws 1st Ex. Sess. Some other examples of this kind of corrective veto are Governor Langlie's section veto of S.B. 51, WASH. S. JOUR. 814 (1941), on the ground that its title was insufficient under WASH. CONST. art. II, § 19, which requires that the title of each act embody the subject contained therein; Governor Langlie's section veto of H.B. 130, WASH. H.R. JOUR. 1050 (1951), on the identical ground of defective title.

36. S.B. 146, ch. 308, [1971] Wash. Laws 1st Ex. Sess.

and provided a comprehensive system for regulating and proscribing the use of various classes of drugs. The other bill³⁷ contained an inconsistent section providing for mandatory minimum terms of imprisonment for persons convicted of selling or attempting to sell "narcotic drugs" or "dangerous drugs" for profit. The Governor corrected the inconsistency by vetoing the "narcotic drugs" and "dangerous drugs" section in the latter bill.³⁸

While the use of the partial veto in a corrective manner may be considered helpful, its use to substantively alter the basic scope and policy of legislation by deleting vital words and phrases may be opposed not only by the proscription on affirmative vetoes established in *Spokane Grain & Fuel* but by numerous policy arguments: Such a use increases the already much expanded powers of the Executive, destroys the basic principles of checks and balances and separation of powers, interferes with the delicate political compromise inherent in legislation of any significance and encourages use of cumbersome referenda in order to immunize legislation from the partial veto.³⁹

The most significant of these adverse effects is the use of the partial veto which tends to destroy the compromise inherent in legislation. The Legislature in our constitutional system determines the policy of the law, but does so only after a collective process of compromise among the legislators has culminated in a single product. When used to substantively alter legislation by deleting crucial words and phrases, the partial veto power permits the Governor to substitute his individual judgment for the collective judgment of the Legislature, thereby disrupting the political balance achieved through the legislative process.⁴⁰ While the Governor should be vested with the veto power,

37. S.B. 108, ch. 295, [1971] Wash. Laws 1st Ex. Sess.

38. See Governor Evans' veto message on S.B. 108, WASH. S. JOUR. 2009 (1971). Other examples of bills vetoed on the ground that they were ambiguous, vague or in need of clarification, are numerous. Illustrative of this use of the partial veto is the fact that of the 33 bills passed during the 1973 First Extraordinary Session and partially vetoed, eight of these bills appear to have been vetoed at least in part in order to resolve an ambiguity or clarify the bill. See Governor Evans' veto messages on the following bills which were passed during the 1973 First Extraordinary Session: H.B. 590, Sub. H.B. 711, H.B. 720, H.B. 901, S.B. 2153, S.B. 2256, Sub. S.B. 2800, Sub. S.B. 2854.

39. See, e.g., Note, *The Item Veto in the American Constitutional System*, 25 GEO. L.J. 106 (1936). The Governor cannot veto referenda. WASH. CONST. art. II, § 1(d).

40. The continued use of the partial veto power, especially those vetoes of isolated words, phrases and other matter in bills, may have a reactionary influence on the Legislature. Legislators' apprehension over the partial veto power has a tendency to discourage the chance of passage of important and controversial bills. Legislators who

that power should permit him only to approve or disapprove entirely the Legislature's final product and should not permit him to approve a bill and at the same time utilize the partial veto to alter portions which he finds unpalatable.

An example of a substantive or "creative" use of the partial veto may best illustrate its capacity to undermine the legislative system. Subsection 6 (1) of the Residential Landlord-Tenant Act of 1973,⁴¹ passed during the 1973 First Extraordinary Session, deals with the landlord's duty to keep the tenant's premises fit for human habitation. This Subsection contained the following partial veto:

The landlord will at all times during the tenancy keep the premises fit for human habitation, and shall in particular:

(1) Maintain the premises to substantially comply with any applicable code, statute, ordinance, or regulation governing their maintenance or operation, which the legislative body enacting the applicable code, statute, ordinance or regulation could enforce as to the premises rented *if such condition substantially endangers or impairs the health or safety of the tenant.* . . . (emphasis added to vetoed portion)

The Governor justified the deletion on the grounds that the limitation created too difficult a burden of proof for tenants wanting to take advantage of the new law.⁴² Without vetoing the whole bill or even the entire section, the extent of the landlord's obligation was significantly increased and substantively altered from that contemplated by the Legislature, possibly destroying a delicate compromise between the forces supporting and those opposing landlord-tenant legislation. Even though the change may be thought desirable, the Governor is not the branch of government in our system given primary responsibility to legislate social philosophy; that responsibility has been given to the legislature.

One can only conclude that substantive vetoes reflect the social philosophies of the Governor who makes them.⁴³ It is obvious that dif-

spend a great amount of time reaching compromises on bills only to see the compromises late vetoed by the Governor are simply not going to be as willing to work out compromises in the future. A legislator today may never know if he is, in fact, reaching a true compromise because it is possible that the legislator with whom he is dealing may persuade the Governor to veto the compromise.

41. Ch. 207, § 6, [1973] Wash. Laws 1st Ex. Sess.

42. See Governor Evans' veto message on Sub. S.B. 2226, ch. 207, [1973] Wash. Laws, 1st Ex. Sess.

43. An idea of the role played by the Governor's social philosophy in the veto process can be obtained by reviewing some of the vetoes of Clarence D. Martin, who

ferent governors will have different social philosophies and that what one governor may oppose another governor may endorse. A look at the substantive vetoes made by Washington governors reveals that not infrequently a governor has approved a bill that a previous governor has vetoed.⁴⁴

Table 1 shows the role played by the corrective and substantive veto during the sessions beginning with the 1969 Regular Session and ending with the adjournment of the 1971 Special Session.⁴⁵

TABLE 1
SUBSTANTIVE AND CORRECTIVE VETOES

Sessions	No. of partially vetoed bills containing substantive vetoes	No. of partially vetoed bills containing corrective vetoes
1969 Regular & Special Sessions	31	21
1970 Special Session	10	7
1971 Regular & Special Sessions	29	22
TOTALS	70	50

was Washington's governor during the depression sessions beginning in 1933 through 1939. Governor Martin vetoed: (1) portions of a comprehensive tax bill, which portions would have imposed a tax on stock issues and transfers, on gifts and on proprietary medicines and toilet preparations (H.B. 237, WASH. H.R. JOUR. 1007 (1935)); (2) a bill expanding the junior college system (S.B. 71, WASH. S. JOUR. 778 (1937)); (3) a bill prohibiting the manufacturing and selling of adulterated or misbranded food, drugs and cosmetics and prohibiting the false advertising of food, drugs and cosmetics (S.B. 213, WASH. S. JOUR. 782 (1937)); (4) bills requiring the licensing and bonding of contractors (S.B. 214, WASH. S. JOUR. 782 (1937) and S.B. 278, WASH. S. JOUR. 784 (1937)); (5) a bill allowing the sale of wine and beer on Sundays (H.B. 443, WASH. S. JOUR. 896 (1937)). Governor Martin's successor, Arthur B. Langlie, appears from his vetoes to have been of the same philosophical bent as Governor Martin, and during his first year as governor he vetoed bills which would have licensed and provided sanitation standards for restaurants and which would have provided a comprehensive state program of meat and meat food product inspection designed to eliminate unwholesome or adulterated meats and meat food products. H.B. 173, WASH. H.R. JOUR. 1027 (1941) and H.B. 196, WASH. H.R. JOUR. 1029 (1941).

44. For example, subsequent to the vetoes described in note 43 *supra*, the Legislature passed bills requiring the licensing and bonding of contractors, prohibiting the manufacturing and selling of adulterated or misbranded foods, drugs and cosmetics, and providing for a comprehensive state inspection program of meat and meat food products, all of which the Governor did not veto. See WASH. REV CODE ch's 18.27, 69.04, 16.49A (1963).

45. The information in this Table is taken from a chart prepared by the Legisla-

This table, in conjunction with Appendix A, indicates that not only has a trend towards greatly increased use of the partial veto been established in recent years, but also that more bills partially vetoed have been substantively altered than merely correctively altered.

The need for the corrective veto is the principal argument for retaining the partial veto in the nonappropriation bill context.⁴⁶ It can be argued, however, that this need is not so great now as it was in previous years, when the Legislature met every two years and then only for 60 days. Since 1969, the Washington Legislature has met each year in a lengthy session, thus putting the Legislature in a better position to correct its own mistakes.⁴⁷ Furthermore, the resolution of ambiguities in legislation necessarily involves statutory interpretation, a function best performed by the courts. Finally, whatever constructive value may be ascribed to the corrective veto is more than outweighed by the destructive capacity of the substantive veto.

IV. A SUGGESTED REVISION OF WASHINGTON CONSTITUTION, ARTICLE III, SECTION 12, TO LIMIT THE GOVERNOR'S PARTIAL VETO POWER

The adverse impact of the unrestricted partial veto power on the legislative process and its incompatibility with the basic tenets of our form of government are substantial reasons to amend the partial veto power. Such an amendment should preclude the Governor from exercising "creative" partial vetoes which substantively alter legislation and should be sufficiently clear to leave no doubt concerning the extent of the partial veto power.

An amendment to Article III, Section 12, eliminating the "section" veto power and restricting the "item" veto power to entire appropriation items would accomplish this goal and bring the veto provisions of

ture's Legislative Council which accompanied a Council Staff Memorandum of Oct. 1, 1971, to the members of the Judiciary Committee. Because a single bill may contain both substantive and corrective vetoes, the total number of bills partially vetoed during the 41st Legislature (*see* Appendix A, col. (5)) will not equal the total number of bills with partial substantive and partial corrective vetoes summarized for the same years in Table 1.

46. *See* Letter from the Governor's Administrative Assistant to the (then) Senate Committee on Constitution and Elections, Jan. 17, 1973, and attached memorandum.

47. The historic meeting of the Legislature in the September, 1973, eight-day "Mini-Session" further undermines the principal argument for retaining the partial veto in the nonappropriation bill context.

the Washington Constitution into conformity with the veto provisions of most other state constitutions.⁴⁸ The retention of the partial veto power over items in appropriation bills would permit the Governor to exercise the salutary fiscal restraint which that power is generally thought to further; namely, the discouragement of "pork barrel" appropriations and "riders."⁴⁹ The following revision of Article III, Section 12, is proposed:⁵⁰

Every act which shall have passed the legislature shall be, before it becomes a law, presented to the governor. If he approves, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, which house shall enter the objections at large upon the journal and proceed to reconsider. If, after such reconsideration, two-thirds of the members present shall agree to pass the bill 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 . . . If any bill presented to the governor contain (~~several sections or~~) *one or more items appropriating money*, he may object to one or more (~~sections or~~) items while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the (~~section or sections~~) item or items to which he objects and the reasons therefor, and the (~~section or sections~~) item or items so objected to, shall not take effect unless passed over the governor's objection, as hereinbefore provided.

48. With some variations, the provisions of most state constitutions permit the governor to strike only entire bills and appropriation items. See note 3 *supra* for the provisions of the Oregon and South Carolina constitutions which provide for a greater power, and note 1 *supra* for those states which do not permit "item" vetoes. Notwithstanding the provision in the South Carolina Constitution which, like Article III, Section 12, of the Washington State Constitution, allows the Governor to veto "sections or items," the South Carolina Governors have only used the item veto power on appropriation items. Conversation with the Chief Counsel for the South Carolina Legislative Council. There is no reported South Carolina case indicating that the South Carolina Governor's item veto power extends to nonappropriation items.

49. See, e.g., Note, *The Item Veto in the American Constitutional System*, 25 GEO. L.J. 106 (1936).

50. Parenthetical language constitutes language which would be deleted from the existing Article III, Section 12; italicized language constitutes language which would be added. It is noted that during both the 1971 and 1973 regular sessions, a measure was introduced to revise Article III, Section 12. This measure (designated Senate Joint Resolution 14 during the 1971 regular session and Senate Joint Resolution 103 during the 1973 regular session) would restrict the "item" veto power to items in appropriation bills and would retain the "section" veto power.

Partial Veto

In conclusion, a statistical analysis of Washington governors' use of the partial veto power since 1933 reveals a recent increase in both the scope of and the reliance on this power to substantively alter legislation. This use of the partial veto power is destructive of the legislative process and results in expansion of the power of the Executive. Recent and unfortunate experience at the national level has demonstrated the danger in permitting the Executive to assume unbridled powers.⁵¹ Since the Washington Supreme Court has not seen fit to clearly limit the use of the partial veto power, the only recourse appears to be a constitutional amendment.

51. The Watergate episode is illustrative.

52. The figures used in this chart were compiled from the veto messages contained in the LEGISLATIVE DIGEST for each session of the Legislature from 1933 through the 1973 First Extraordinary Session.

53. Includes only bills with vetoed sections which are shown as actual sections in the bills.

54. Includes only bills with portions of actual bill sections vetoed.

55. Includes as a single partial veto all stricken contiguous language and punctuation. Language or punctuation is only considered contiguous if it immediately follows or immediately precedes other stricken language or punctuation.

56. Includes only bills with vetoed sections which are shown as actual sections in the bills.

57. Includes each monetary amount listed in an appropriation section, together with adjacent language describing or limiting the manner in which the monetary amount can be spent.

58. Includes vetoes of the portion of an appropriation bill which directs the *method* of using the amount appropriated for a particular use or department. See Beckman, *The Item Veto Power of the Executive*, 31 TEMP. L.Q. 27 (1957).

APPENDIX A³²
 USE OF THE VETO POWER FROM THE 23RD LEGISLATURE (1933)
 THROUGH THE 1973 FIRST EXTRAORDINARY SESSION

Col. (1)	Col. (2)	Col. (3)	Col. (4)	Col. (5)	Col. (6)	Col. (7)	Col. (8)	Col. (9)	Col. (10)	Col. (11)	Col. (12)
Legis- lature	Total No. Bills Passed	Total No. Bills Partially Fully Vetoed	Total No. Bills Fully Vetoed	Total No. Bills Partially Vetoed	Total No. Bills with Entire Section Vetoed ³³	Total No. Bills with Less Section Vetoed ³⁴	Total No. Bills with Section Vetoed ³⁵	Total No. Bills of less Section in Nonapprop. Bills ³⁶	Total No. Bills with less than Section Vetoed ³⁷	Total No. Bills Entire Approp. Items Vetoed ³⁸	Total No. Bills of Approp. Items Vetoed ³⁹
23rd (33-34)	277	34	21	13	10	38	3	5	1	14	0
24th (35-36)	191	12	5	7	6	74	1	2	1	9	0
25th (37-38)	251	40	20	20	18	29	2	4	2	38	0
26th (39-40)	232	18	6	12	9	10	3	4	2	15	0
27th (41-42)	276	38	23	15	12	17	1	2	3	20	0
28th (43-44)	297	12	8	4	2	2	1	1	1	4	0
29th (45-46)	310	44	39	5	2	3	2	2	1	17	0
30th (47-38)	309	31	20	11	8	18	3	3	2	2	0
31st (49-50)	274	18	12	6	3	3	1	1	2	43	0
32nd (51-52)	315	20	12	8	6	25	1	1	1	0	0
33rd (53-54)	303	20	13	7	5	5	0	0	2	24	0
34th (55-56)	421	19	9	10	6	10	1	1	2	5	1
35th (57-58)	304	19	3	16	15	24	1	1	2	18	0
36th (59-60)	349	12	4	8	3	3	4	4	1	1	0
37th (61-62)	337	22	2	20	13	22	7	7	1	0	3
38th (63-64)	282	19	5	14	4	6	10	12	1	3	2
39th (65-66)	347	40	14	26	13	13	15	39	1	0	1
40th (67-68)	393	29	0	29	13	18	18	23	0	0	0
41st (69-70)	534	58	2	56	26	61	37	67	4	5	10
42nd (71-72)	398	61	8	53	23	55	32	123	3	8	26
43rd (73-74)	389	46	13	33	17	29	17	49	4	3	11