Office of Legislative Research

Research Report

June 13, 2016

2016-R-0087

2016 VETO PACKAGE

By: Alex Reger, Legislative Analyst II

GUBERNATORIAL VETOES

Sections 15 and 16 of Article Fourth of the Connecticut Constitution authorize the governor to veto bills.

The governor may veto an entire bill or use a line-item veto on any provisions of a bill making appropriations (i.e., the governor may veto an appropriations provision of a bill without vetoing the entire bill).

SUMMARY

This report lists each veto from the 2016 legislative session. It also provides for each vetoed act a brief public act summary, including its final vote tally and excerpts from the governor's veto message. The report also includes a numerical summary of previous vetoes.

A vetoed act will not become law unless it is reconsidered and passed again by a two-thirds vote of each house of the General Assembly. The legislature met for a veto session to consider May Special Session bills on June 13, 2016 and is scheduled to meet for a second veto session to consider regular session bills on June 20, 2016.

2016 VETOES

The governor vetoed the following eight public acts:

PA 16-32 *An Act Concerning The Impact Of Proposed Regulations On Small Businesses*

PA 16-85 *An Act Implementing The Recommendations Of The Auditors Of Public Accounts And Repealing A Provision Concerning State Agency Reporting Of Certain Contractor Information*

PA 16-98 *An Act Concerning Operators Of Athletic Activities, Coaches And Referees And The Employer-Employee Relationship*

PA 16-113 *An Act Concerning Principal Investment Officers*

PA 16-115 *An Act Concerning The Creation Of Connecticut Brownfield Land Banks, Certain Lender Responsibility For Releases At Brownfields And Revisions To Brownfield Remediation And Development Programs*

PA 16-177 *An Act Concerning A Municipal Option For Property Tax Abatements For Arts And Culture*

PA 16-183 *An Act Concerning The Apprenticeship Tax Credit And The Tax Credit Report*

SA 16-8 *An Act Concerning Nonemergency Transportation For Medicaid Recipients*

2016 LINE-ITEM VETOES

The governor exercised his line-item veto authority on one public act:

PA 16-2, May Special Session *An Act Adjusting The State Budget For The Biennium Ending June 30, 2017*

2016 VETO SUMMARIES

PA 16-32 — SB 302 *An Act Concerning The Impact Of Proposed Regulations On Small Businesses*

This act expands the types of information that must be included in the regulatory flexibility analysis that agencies must prepare before adopting regulations that directly affect small businesses. Under current law, in preparing these analyses, agencies must consider using specific regulatory methods to minimize adverse effects on small businesses. The act requires each regulatory flexibility analysis to include the following:

1. the proposed regulation's scope and objectives (existing law requires agencies to include the regulations' purpose in its notice of intended action),
2. the types of businesses potentially affected by the proposed regulation,
3. the total number of small businesses potentially subject to the proposed regulation (existing law requires this to be included in the regulations' fiscal note), and
4. whether and to what extent the agency communicated with small businesses or small business organizations in developing the proposed regulation and flexibility analysis.

The act increases, from 75 to 250, the maximum number of employees a business may have to be considered a small business for the purpose of regulatory flexibility analyses.

The act also specifies that agencies must prepare the regulatory flexibility analysis before, or concurrently with, posting a notice of their intended action on the eRegulations system. This notice must be posted at least 30 days before adopting regulations. Current law requires agencies to prepare the fiscal note, which includes the flexibility analysis, at least 30 days before adopting the regulations, but does not tie the deadline to posting the notice.

Senate Vote: 36 to 0 (April 21)

House Vote: 143 to 0 (May 2)

Excerpt from governor's veto message:

While I support the intent of this legislation - to better understand and measure the impact of our regulatory framework on the small businesses in our state – the language in this bill is overly broad and will place an undue burden on our agencies. For example, the bill requires that agencies identify "the total number of small businesses *potentially* subject to the proposed regulation" yet provides no guidance on the term "potentially" is to be defined (emphasis original).

I welcome the opportunity to work with the proponents of this legislation to address these concerns and to craft a more refined bill to alleviate administrative burdens [on] our state's small businesses without imposing too great a burden on our state agencies.

PA 16-85 — HB 5247 An Act Implementing The Recommendations Of The Auditors Of Public Accounts And Repealing A Provision Concerning State Agency Reporting Of Certain Contractor Information

This act makes numerous changes to statutes concerning government administration. Among other things, it does the following:

1. allows the auditors of public accounts to (a) delay a full report of certain misuses of state and quasi-public agency funds until the subject agency completes its investigation into those activities and (b) permit aggregate reporting by state and quasi-public agencies to the auditors of these activities (§§ 1-2);

2. requires the auditors to notify the Government Administration and Elections (GAE) Committee whenever state and quasi-public agencies fail to notify them of certain misuses of state funds (§ 2);

3. expands who must report certain suspected ethics violations to the Office of State Ethics (OSE) to include state agencies' human resources directors (§ 4);

4. limits the circumstances under which the Office of Policy and Management (OPM) secretary may waive competitive bidding requirements for certain personal services agreements (§ 3);

5. requires the OPM secretary to notify the auditors whenever he receives a request from a state agency for a sole source procurement of certain audit services (§ 3);

6. allows the auditors of public accounts to conduct a full audit of a state agency foundation that did not have its own audit completed (§§ 5-6);

7. subjects probate courts to the state's whistleblower law (§ 9);

8. requires executive branch agencies to receive approval from the attorney general or governor before making certain payments to departing state employees (§ 12); and

9. eliminates a reporting requirement associated with purchases of goods and services and leases of real or personal property (§ 13).

The act also requires the auditors to audit biennially, rather than annually, reimbursements from the Bradley Enterprise Fund to the Department of Emergency Services and Public Protection; the reimbursements support State Police patrols at Bradley Airport (§ 8). It requires quasi-public agencies to include an operating statement in their annual report to the governor, auditors of public accounts, and the Program Review and Investigations (PRI) Committee; current law requires that they include a balance sheet only (§ 10).

The act places the Commission on Health Equity within the Insurance Department for administrative purposes only; under current law, the commission is within the Office of the Healthcare Advocate for administrative purposes only (§ 11). Lastly, it (1) makes technical changes to a statute concerning UConn's awarding of construction contracts (§ 7) and (2) repeals obsolete statutes concerning sheriffs (§ 13).

Senate Vote: 36 to 0 (May 4)

House Vote: 144 to 0 (April 29)

Excerpt from governor's veto message:

This bill expands legislative oversight of executive agencies and curtails contracting powers of the executive branch.

Two separate sections of House Bill 5247 encroach upon the purview of the executive branch of government. Section 2 of the bill authorizes the General Assembly to require the head of any agency or quasi-public agency to appear before the government administration and election committee to explain the agency's alleged failure to timely notify the Auditors of Public Accounts of any lost funds or resources. There is no question that it is in the public interest for [agencies] to comply with requirements that such losses be reported in a timely manner, however, requiring that a hearing be conducted at a cost to the taxpayers is an unnecessary step that could be resolved in a more cost effective manner. Agencies should be held accountable, but their accountability is already properly placed with the executive branch.

Section 3 of House Bill 5247 also restricts executive branch powers by limiting the circumstances under which the Secretary of the Office of Policy and Management may waive competitive bidding requirements for certain personal services agreements. Under current law, the Secretary may establish certain types of services under which competitive bidding requirements can be waived for circumstances that are necessary, but not delineated in statute.

PA 16-98 — HB 5261 An Act Concerning Operators Of Athletic Activities, Coaches And Referees And The Employer-Employee Relationship

This act exempts coaches and referees who work for private or public athletic programs, other than public school districts, from employer-employee rules for purposes of unemployment taxes and compensation. Under the act, as of October 1, 2016 no employer-employee relationship is deemed to exist between certain operators of organized athletic activities and certain individuals employed as coaches or referees of those organized athletic activities, except such operators and individuals can mutually agree, in writing, to enter into an employer-employee relationship.

This means the employer will not be required to pay unemployment taxes and the employee will not be eligible for unemployment compensation from the employer in the event of the employee's loss of employment. In general, private sector employers pay unemployment taxes on the first $15,000 in annual wages paid to each of their employees.

Under current law, the employer-employee relationship is determined by a multi-step test that includes whether the employee is under the direct supervision and control of the employer.

Senate Vote: 36 to 0 (May 4)

House Vote: 138 to 7 (May 4)

Excerpt from governor's veto message:

This bill creates an overly broad exemption to Connecticut labor laws.

House Bill 5261 would automatically deem all coaches and referees engaged in service to an organized athletic organization as independent contractors. As a result, none of these individuals, regardless of their working conditions, would be eligible for unemployment compensation, nor would they be protected by employee wage and hour laws.

…

When employers are seeking to determine whether their workers are independent contractors or employees, the Department of Labor stands ready to serve as resource. By utilizing the Department's expertise, employers can save time and money, and reduce the risk that they make a wrong determination. It is important for both employers and workers that this assessment is done properly, and by using the Department as a resource, all stakeholders will benefit. This type of partnership, as opposed to overly broad exemptions, is how we can get this issue right.

PA 16-113 — HB 5420 An Act Concerning Principal Investment Officers

The act allows the Treasurer to appoint principal investment officers at a compensation level determined by the Treasurer in consultation with the Investment Advisory Council. In doing so, the act removes certain compensation restrictions and approvals from the principal investment officer classification.

Senate Vote: 36 to 0 (May 4)

House Vote: 144 to 1 (April 27)

Excerpt from governor's veto message:

This bill would allow the Treasurer to determine the compensation for a Principal Investment Officer within a salary range established by the Treasurer in consultation with the Investment Advisory Council.

Under current law, except as otherwise allowed by statute, salary and compensation of all state executive branch officers, boards, commissions, deputies and employees are determined by the Commissioner of Administrative services, subject to the approval of the Secretary of the Office of Policy and Management. To permit the Treasurer to deviate from this process and to determine the compensation for this class of employees in isolation would reduce the ability of the public service classification system to operate in a manner that is consistent across state government. Further, I am surprised that at a time when the legislature included no money for increased salaries in the budget, we are eliminating positions and currently negotiating contracts with the majority of our state employees, that the legislature would pass a bill such as this . This is not the time to allow the potential for the establishment of an increased salary range without further oversight.

PA 16-115 — HB 5425 An Act Concerning The Creation Of Connecticut Brownfield Land Banks, Certain Lender Responsibility For Releases At Brownfields And Revisions To Brownfield Remediation And Development Programs

This act establishes a framework for organizing and operating local nonprofit land banks for acquiring, remediating, and selling brownfields. These entities must be certified by the Department of Economic and Community Development (DECD) and operate under a land banking agreement with one or more municipalities. The bill allows these banks to access the same brownfield remediation tools and incentives available to municipalities.

The act specifies that the liability protection afforded developers under DECD's Brownfield Remediation and Revitalization Program applies to lenders given a security interest in a property being remediated under the program as long as they are not responsible for polluting it under any statute. The program protects participating developers from liability to the state and third parties for cleaning up brownfields according to the program's requirements.

Current law already protects lenders from liability when they hold or obtain a security interest in a remediated property as long as they do not participate in its management (CGS § 22a-452f). The act specifies that any protection a lender receives under current law for a property is not affected if that property is being remediated under the program.

The act also changes one of the conditions for extending the program's protections to a party that acquires a property being remediated under the program (i.e., transferee). Under current law, among other things, the transferee must pay the same fee as the property's initial owner. The act requires the transferee to pay a $10,000 fee or the balance of any unpaid fee, whichever is greater.

Senate Vote: 35 to 1 (May 4)

House Vote: 145 to 0 (April 28)

Excerpt from governor's veto message:

This bill establishes a framework for organizing and operating local nonprofit land backs for acquiring, remediating and selling brownfields. The provisions would help smaller municipalities that do not have the resources to undertake this complex, expensive and important work.

While I support the intent of this bill, it has been brought to my attention that Section 5, which exempts any notes or other obligations issued by a brownfield land bank from all state taxation, could result in millions of dollars of revenue loss for the state. Under a federal statute and a United States Supreme Court case, there is "parity" treatment required between state and federal securities relative to corporate taxation…For this reason, if the state exempts a security of an entity (a land bank) that might be considered an agency of a political subdivision of the state (a municipality) from all taxes, then corporations could argue that they also should not be required to pay state corporate taxes measured by their holdings of federal securities. Even if no land bank ever issues debt obligations under this section, the mere existence of this language may run afoul of the parity provision, and put state corporate tax revenues at risk.

The stakeholders who worked on this bill have agreed that a fix is necessary to remove this problematic language. I would urge the proponents to adopt a revised version of this bill early next legislative session so that this important program can move forward.

PA 16-177 — SB 397 An Act Concerning A Municipal Option For Property Tax Abatements For Arts And Culture

This act allows municipalities to abate up to 100% of the property taxes on otherwise taxable property used for arts and culture, including art galleries and studios, installation galleries, movie theaters, performance venues, and stores and

restaurants catering or relating to the arts. A municipality that chooses to abate the taxes on these properties must do so by a vote of its legislative body. If that body is a town meeting, the board of selectmen must vote to abate the taxes.

The law already exempts nonprofit organizations from paying property taxes on arts and cultural facilities they own and operate as long as they use them only for scientific, educational, literacy, historical, or charitable purposes. (Nonprofit organizations that preserve open space land also pay no property taxes on the land) (CGS § 12-81(7)).

Senate Vote: 35 to 1 (April 30)

House Vote: 125 to 20 (May 4)

Excerpt from governor's veto message:

This bill gives municipalities the ability to abate up to one hundred percent of the property taxes due for any property used for arts or culture, including properties used by for-profit entities.

The law already exempts *nonprofit* [emphasis in original] organizations from paying property taxes on arts and cultural facilities as long as they use them for scientific, educational, literacy, historical, or charitable purposes. If this bill were to become law, municipalities would be subject to pressure to exempt *for-profit* [emphasis in original] entities, such as movie theaters, from property taxes as well. This legislation does not differentiate between enterprise zones and other areas, and could therefore encourage competition between municipalities to grant tax breaks that result in sprawl development rather than development in regional hubs. While I have been a longtime supporter of the arts and other cultural activities, I do not think the state should be encouraging exemption of for-profit entities from taxation without limitation.

Furthermore, there are numerous programs already in existence that provide municipalities with the means to incentivize business development.

PA 16-183 — HB 5636 An Act Concerning The Apprenticeship Tax Credit And The Tax Credit Report

This act extends the manufacturing apprenticeship tax credit to pass-through entities, thus allowing their owners and partners to claim the credit against their personal income taxes. It also shifts, from the Department of Economic and Community Development (DECD) to the Program Review and Investigation Committee (PRI), the responsibility for preparing the three-year evaluation of the

state's economic development tax incentives; reduces the report's scope; and requires the Appropriations and Finance, Revenue and Bonding committees to hold hearings on the report.

Senate Vote: 36 to 0 (May 4)

House Vote: 149 to 0 (May 3)

Excerpt from governor's veto message:

This bill would allow owners or shareholders of pass-through entities such as S corporations, partnerships, and limited liability companies to claim the manufacturing apprenticeship tax credit against the personal income tax and would revise the requirements for a report on existing tax credits.

Under current law, entities that are unable to use manufacturing apprenticeship tax credits themselves because they are not subject to the corporation business tax may sell them to other entities that have sufficient liability to use them. Current law also imposes reasonable limits on a corporation's total reduction in its tax liability through the use of tax credits. HB 5636 would instead allow individual partners in, or shareholders of, pass-through entities to claim the tax credits on their personal income tax returns, without any limit on the amount of reduction in an individual's tax liability. Allowing business tax credits to be claimed against the personal income tax would open the door for other similar proposals and increase the likelihood that the credits will result in a revenue loss to the state. The Office of Policy and Management estimates that the bill could result in an additional annual revenue loss of approximately $100,000 starting in FY 2018 from the additional use of the credits. In addition, the Department of Revenue Service (DRS) will incur a significant unbudgeted expense to implement this change on tax forms and in the Taxpayer Service Center. I stand ready to work with the proponents of the bill to pass legislation that includes a reasonable limit on individual tax liability, but I cannot support this legislation as written.

Finally, House Bill 5636 makes changes to the overall scope and responsibility for analysis of tax incentives for economic development…I consider this change unnecessary and unwarranted.

SA 16-8 — HB 5437 An Act Concerning Nonemergency Transportation For Medicaid Recipients

This act requires the Social Services commissioner to issue a request for proposals for transportation broker services for the coordination and administration of nonemergency medical transportation services for medical assistance recipients.

The act requires the commissioner to consider, among other things, minimum wait times for livery transportation to and from medical appointments and minimum performance standards.

Senate Vote: 36 to 0 (May 4)

House Vote: 144 to 0 (April 28)

Excerpt from governor's veto message:

This bill requires the Commissioner of the Department of Social Services to issue a request for proposals for transportation broker services for the coordination and administration on nonemergency medical transportation services for medical assistance recipients.

Currently, procurement of goods and services by state agencies is governed by the Connecticut General Statutes. These statutes clearly establish that competitive procurement processes are the standard in this state, and that only limited exceptions to these rules are permitted. I fully support the existing competitive procurement processes required for the goods and services we provide through our agencies.

House Bill 5437 is a clear legislative intrusion into the function of the executive branch. The bill directs the Department of Social Services to engage in a specific procurement process for a specific service by a date certain, and further directs the agency as to the items that it is required to both consider and to include in any contract resulting from the procurement process. House Bill 5437 intrudes on the authority of the executive branch by specifically proscribing how a procurement process already governed by state law should be undertaken and by establishing a precedent permitting the legislature to direct any future procurement processes going forward.

The Department of Social Services has already begun the process of reviewing the manner in which the state contracts for and provides nonemergency medical transportation services through the issuance of an Request for Information in March of this year. The Department should focus its resources on the procurement process that is already underway and I am directing the Department to proceed with this procurement in an expeditious manner taking into account the circumstances and issues identified by the legislature. The department's resources should not be diverted to comply with a new procurement dictated by the Legislature.

2016 LINE-ITEM VETO SUMMARY

PA 16-2, May Special Session — SB 501 *An Act Adjusting The State Budget For The Biennium Ending June 30, 2017*

This act modifies appropriations and revenue estimates for FY 17 that were previously adopted in 2015 as part of the 2016-2017 biennial state budget and makes various revenue changes.

Senate Vote: 21 to 15 (May 12)

House Vote: 74 to 70 (May 13)

Excerpt from governor's veto message:

…I have exercised my authority, pursuant to said Section 16 [of the Connecticut Constitution], to disapprove of the following items in Section 1, each of which makes a distinct appropriation of funds: $775,000 for Federally Qualified Health Centers (FQHC) Supplemental Payments; $1,731,172 for the Connecticut Humanities Council; and elimination of a $20 million lapse in the Municipal Opportunities and Regional Efficiencies (MORE) Program. My disapproval of the item eliminating the lapse in the MORE program restores a reduction of $20 million in municipal aid that was included in the underlying budget.

Taken as a whole, the budget adjustments represented in this bill, and specifically the drastic reductions in state spending, are important and necessary to meet Connecticut's economic reality…

At the same time, eliminating the above-listed appropriations is necessary to bring our budget into balance for two reasons:

First, House Bill 5233, An Act Concerning Health Insurance Coverage for Tomosynthesis for Breast Cancer Screenings, will incur in FY 2017 a significant expense to the General Fund that is not accounted for in Emergency Certified Bill 501. While I have signed HB 5233 into law, adjustments to our budget are necessary to pay for it.

Second, Emergency Certified Bill 501 assumes significant savings resulting from specific criminal justice policy changes proposed by my administration. Unfortunately, the General Assembly has not passed the necessary implementing language for these changes in the time required for action on Emergency Certified Bill 501. Consequently, the budget would be out of balance if these adjustments were not made.

HISTORICAL CONTEXT

Table 1 lists the number of vetoes for the current governor by legislative session.

Table 1: Vetoes by Legislative Session since 2011

Governor	*Legislative Session*	*Vetoes (Line Item Vetoes)*	*Vetoes Overruled*	*OLR Veto Package Report*
Malloy	2011	6 (0)	0	2011-R-0270
Malloy	2011 June Special Session	0 (0)	0	-
Malloy	2011 October Special Session	0 (0)	0	-
Malloy	2012	8 (0)	0	2012-R-0278
Malloy	2012 June Special Session	0 (0)	0	-
Malloy	2012 June Special Session	0 (0)	0	-
Malloy	2012 December Special Session	0 (0)	0	-
Malloy	2013	8 (0)	0	2013-R-0284
Malloy	2014	8 (0)	0	2014-R-0179
Malloy	2015	9 (0)	0	2015-R-0144
Malloy	2015 June Special Session	0 (0)	0	-
Malloy	2015 December Special Session	0 (0)	0	-
Malloy	2016	8 (0)	*	2016-R-0087
Malloy	2016 May Special Session	0 (1)	*	2016-R-0087

*The veto report is published prior to each veto-session.

AR:bs