OFFICE OF LEGISLATIVE RESEARCH
Objective Research for Connecticut's Legislature

ResearchReport

Gubernatorial Line Item Veto Power in Connecticut

By: Alex Reger, Associate Analyst
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Issue

Explain the governor's line item veto power in Connecticut, including how the governor exercises it and its application to tax provisions and appropriation reductions.

The Office of Legislative Research is not authorized to give legal opinions and this report should not be considered one.

Summary

Section 16 of Article Fourth of the Connecticut Constitution authorizes the governor to disapprove of any "item or items of any bill making appropriations of money. . . while at the same time approving the remainder of the bill." This partial veto power is referred to as a "line item veto." Line item vetoes may be overridden by the legislature in the same manner as other gubernatorial vetoes (i.e., by repassing the vetoed appropriations by a two-thirds vote in each chamber).

The Connecticut Supreme Court has interpreted the line item veto power as applying to specific appropriations, which would appear to include bill provisions reducing appropriations but exclude more general tax provisions.

According to the legislative library, Connecticut governors have used the line item veto at least 14 times since 1934, when Article XL of the amendments to the Connecticut Constitution required the governor to sign or object (i.e., veto) a bill (thus ending the practice of the "pocket veto.")

Line Item Veto

Process

Once a bill is passed in both legislative chambers and transmitted to the secretary of the state, the secretary transmits it to the governor. To exercise a line item veto, the governor must sign the bill and attach to it (1) a statement of the item or items he vetoes and (2) his reasons for vetoing the provisions. The governor must then return the bill and attached documents to the secretary (Article Fourth, Section 16, Connecticut Constitution).

Judicial Review of Line Item Veto Power

The Connecticut Supreme Court has on at least three occasions reviewed cases involving the governor's line item veto power: *Patterson v. Dempsey*, 152 Conn. 431 (1965); *Caldwell v. Meskill,* 164 Conn. 299 (1973); and *University of Connecticut Chapter, AAUP v. Governor, 200 Conn. 386* (July 1986).

Patterson v. Dempsey, 152 Conn. 431 (1965)

In *Patterson,* the General Assembly had enacted a special act that contained itemized appropriations for the operation of state government during the fiscal biennium from July 1, 1963 through June 30, 1965. The governor vetoed four sections of the act and approved the remainder. The question before the court was whether the governor properly exercised his line item veto power.

The court determined that the special act that contained the vetoed section was an appropriations bill. But the court, citing *Bengzon v. Secretary of Justice,* 299 U.S. 410 (1937), concluded that the power granted to the governor was the power to veto only those items of an appropriations bill that in and of themselves were specific appropriations of money. Citing *Commonwealth v. Dodson*, 176 VA. 281 (1940), the court concluded an appropriation is an "indivisible sum of money dedicated to a stated purpose." When viewing the sections of the bill vetoed by the governor, the court held that the sections contained "general legislation" instead of appropriations of money, and thus the governor's veto of those sections was unconstitutional.

Caldwell v. Meskill, 164 Conn. 299 (1973)

In this case, the governor vetoed two sections of a bill outlining how the Public Service Tax Fund was to be used. The court, applying the same rationale as it had in *Patterson,* held that "since none of the sections of the bill vetoed by the governor constitutes or contains items of appropriation they were not subject to his veto in the exercise of the powers vested in him by Article Fourth, Section 16, of the Constitution of Connecticut."

One of the vetoed provisions required that "expenditures by the [transportation] commissioner in the exercise of his powers [under specific law]. . .shall be charged to the resources of the public service tax fund available to the commissioner for such purposes." The court concluded that this was not an "implied appropriation" because:

> *[t]he inclusion of the word 'available' clearly indicates that in making expenditures the commissioner is in fact confined to drawing on resources already at his disposal. There is no suggestion of any intention to make a new appropriation.*

The court also held that the governor cannot conditionally veto a bill upon the happening of action that could occur after the constitutionally prescribed period within which the governor has to veto or approve a bill (i.e., the governor cannot exercise his right of partial veto and at the same time state that the entire bill should be considered vetoed in the event that his partial veto is successfully challenged).

University of Connecticut Chapter AAUP v. Governor, 200 Conn. 386 (1986)

In this case, the court rejected a challenge to the constitutionality of a statute which permits the governor to reduce budgetary allotments by up to five percent under certain circumstances. Among other things, the court held that the statutory authority to reduce allotments did not constitute a line-item veto, as the entire appropriations act remained effective and the expenditure could later be restored.

Application to Tax Provisions and Appropriation Reductions

Tax Provisions

The court has not explicitly addressed whether the governor may use a line item veto on a tax provision. The court has limited the line item veto power to specific "items of appropriations" (i.e., a line item designating a specific sum of money for a specific purpose), which would appear to exclude more general tax provisions.

We found at least one court opinion from another state that extends a governor's line item veto authority to a tax provision which explicitly directs the revenue of the tax to a specific program. In *Johnson v. Carlson, 507 N.W.2d 232* (Minn. 1993), the Minnesota Supreme Court held that a provision requiring revenue from a specific tax increase to be allocated to a higher education program was an "item of appropriation" subject to the governor's line-item veto authority.

Appropriation Reductions

The court has not issued an opinion on a line item that reduces an appropriation. However, in 2016 the governor vetoed both appropriations and the elimination of a lapse, and neither was challenged (PA 16-2, May special session).

Use of Line Item Vetoes in Connecticut

According to the legislative library, there have been at least 14 line item vetoes since 1934, when the Article XL of the amendments to the Connecticut Constitution eliminated the pocket veto.

In addition to the *Patterson* and *Caldwell* cases described above, there was at least one other unsuccessful line item veto, in 2009. That year, Governor Rell vetoed several appropriations provisions of PA 09-3 but returned the bill without her signature. In response, Attorney General Blumenthal issued a letter stating that the Constitution permits the line-item veto only on a signed bill. Governor Rell then chose to let the bill become law without her signature instead of making the line-item vetoes.

Background

Article Fourth, Section 16

Section 16 of Article Fourth of the Connecticut Constitution reads:

> *The governor shall have power to disapprove of any item or items of any bill making appropriations of money embracing distinct items while at the same time approving the remainder of the bill, and the part or parts of the bill so approved shall become effective and the item or items of appropriations so disapproved shall not take effect unless the same are separately reconsidered and repassed in accordance with the rules and limitations prescribed for the passage of bills over the executive veto. In all cases in which the governor shall exercise the right of disapproval hereby conferred he shall append to the bill at the time of signing it a statement of the item or items disapproved, together with his reasons for such disapproval, and transmit the bill and such appended statement to the secretary of the state. If the general assembly be then in session he shall forthwith cause a copy of such statement to be delivered to the house in which the bill originated for reconsideration of the disapproved items in conformity with the rules prescribed for legislative action in respect to bills which have received executive disapproval.*

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