

ITEM VETO AMENDMENT TO THE IOWA CONSTITUTION

I. INTRODUCTION

The President of the United States, under a provision of the Constitution,¹ must approve or disapprove an appropriation bill in its entirety. He has no power to veto any particular item.² Therefore, the President must decide either to veto the bill to defeat the objectionable provisions, a possibility which may "bring the wheels of the government to a stop for want of funds,"³ or approve the bill and make law those items which could not have mustered sufficient support on their own merits.⁴

Until November 5, 1968, the Governor of Iowa, like the President of the United States, did not have the power, under the Iowa Constitution,⁵ to veto any portion of a bill. On that date, by a vote of 411,472 to 328,273,⁶ the voters of Iowa approved and ratified an amendment to the state constitution which granted the state's chief executive power to "disapprove any item of an appropriation bill."⁷ Iowa thus became the forty-third state to incorporate an item veto provision in its constitution.⁸

The amendment to the Iowa Constitution provides:

The governor may approve appropriation bills in whole or in part, and may disapprove any item of an appropriation bill; and the part approved shall become a law. Any item of an appropriation bill disapproved by the governor shall be returned, with his objections, to the house in which it originated, or shall be deposited by him in the office of the secretary of state in the

¹ U.S. CONST. art. I, § 7.

² H. BLACK, *CONSTITUTIONAL LAW* § 67 (3d ed. 1910) states:

At present, the chief magistrate must act upon the "bill" as a whole. An appropriation bill or a revenue measure may consist of a great number of separate items, some of which, in the judgment of the executive, may be unconstitutional or inexpedient. Yet he must either approve or reject the entire act. He has no power to veto any individual item.

³ *Commonwealth v. Barnett*, 199 Pa. 161, 172, 48 A. 976, 977 (1901).

⁴ C. BURDICK, *THE LAW OF THE AMERICAN CONSTITUTION* 83 (1922), notes that President Grant, in his annual message of December 1, 1873, recommended that the Constitution be amended to allow the President to veto part of a bill without vetoing it all, but the recommendation was never acted upon by Congress.

⁵ IOWA CONST. art. III, § 16 (1966).

⁶ IOWA CANVASS OF THE VOTE, GENERAL ELECTION NOVEMBER 5, 1968.

⁷ IOWA CONST. art. III, § 16, 2 IOWA CODE ANN. at 15 (Supp. 1969).

⁸ ALA. CONST. art. 5, § 126; ALAS. CONST. art. 2, § 15; ARIZ. CONST. art. 5, § 7; ARK. CONST. art. 6, § 17; CAL. CONST. art. 4, § 10; COLO. CONST. art. IV, § 12; CONN. CONST. art. 4, § 16; DEL. CONST. art. 3, § 18; FLA. CONST. art. 4, § 18; GA. CONST. § 2.3015; HAWAII CONST. art. III, § 17; IDAHO CONST. art. 4, § 11; ILL. CONST. art. 5, § 16; IOWA CONST. art. III, § 16; KAN. CONST. art. 2, § 14; KY. CONST. § 88; LA. CONST. art. 5, § 16; MD. CONST. art. II, § 17; MASS. CONST. amend. art. 63, § 5; MICH. CONST. art. V, § 19; MINN. CONST. art. 4, § 11; MISS. CONST. art. 4, § 73; MO. CONST. art. 4, § 26; MONT. CONST. art. VII, § 13; NEB. CONST. art. IV, § 15; N.J. CONST. art. 5, § 1, ¶ 15; N.M. CONST. art. IV, § 2; N.Y. CONST. art. 4, § 7; N.D. CONST. § 80; OHIO CONST. art. II, § 16; OKLA. CONST. art. 6, § 12; ORE. CONST. art. V, § 15a; PA. CONST. art. 4, § 16; S.C. CONST. art. 4, § 23; S.D. CONST. art. 4, § 10; TENN. CONST. art. 3, § 18; TEX. CONST. art. 4, § 14; UTAH CONST. art. VII, § 8; VA. CONST. § 76; WASH. CONST. art. 3, § 12; W. VA. CONST. art. 7, § 15; WIS. CONST. art. 5, § 10; WYO. CONST. art. 4, § 9.

case of an appropriation bill submitted to the governor for his approval during the last three days of a session of the General Assembly, and the procedure in each case shall be the same as provided for other bills. Any such item of an appropriation bill may be enacted into law notwithstanding the governor's objections, in the same manner as provided for other bills.⁹

To determine the extent of the powers granted to the governor pursuant to the item veto amendment it is necessary to look to the language of the item veto amendments of the other forty-two states¹⁰ and the cases which have interpreted the terms used therein.¹¹

Before dealing with the item veto amendment, however, it should be noted that the Iowa governor does not have to contend with "riders" attached to appropriation bills submitted for his approval. The Iowa Constitution states that "[e]very act shall embrace but one subject and matters properly connected therewith; which subject shall be expressed in the title."¹² The purpose of this provision and similar provisions found in the majority of state constitutions is:

first, to prevent hodge-podge or "log-rolling" legislation; second, to prevent surprise or fraud upon the legislature by means of provisions in bills of which the titles gave no intimation, and which might therefore be overlooked and carelessly or unintentionally adopted; and third, to fairly apprise the people, through such publication of legislation proceedings as is usually made of the subjects of legislation that are being considered, in order that they may have opportunity of being heard thereon, by petition or otherwise, if they shall so desire.¹³

Any act passed by the legislature may include all matters germane to the main purpose though not specifically mentioned in the title provided there is a "unity of object" to which all parts relate.¹⁴ The "one bill-one subject" provision of the Iowa Constitution has been given a broad and liberal construction.¹⁵ In *Fevold v. Board of Supervisors*, the Iowa Supreme Court stated:

It is the uniform rule that this constitutional requirement is not to be given a narrow or limited construction. It is not intended to prohibit the writing in one bill of any number of provisions having one general object, fairly indicated by the title;

⁹ IOWA CONST. art. III, § 16, 2 IOWA CODE ANN. at 15 (Supp. 1969).

¹⁰ H. BLACK, CONSTITUTIONAL LAW § 68 (4th ed. 1927): "Where a clause or provision in a constitution, which has received a settled judicial construction, is adopted in the same words by the framers of another constitution, it will be presumed that the construction thereof was likewise adopted."

¹¹ *Id.* § 69: "The principle of stare decisis applies with special force to the construction of constitutions, and an interpretation once deliberately put upon the provisions of such an instrument should not be departed from without grave reasons."

¹² IOWA CONST. art. III, § 29. See also Note, *Before A Bill Becomes A Law—Constitutional Form*, 8 DRAKE L. REV. 66 (1958).

¹³ 1 T. COOLEY, CONSTITUTIONAL LIMITATIONS 295-96 (8th ed. 1927). See *Smith v. Thompson*, 219 Iowa 888, 258 N.W. 190 (1935) (dissenting opinion); *Davidson Bld. Co. v. Mulock*, 212 Iowa 730, 737, 235 N.W. 45, 48 (1931).

¹⁴ *State v. Davis County Judge*, 2 Iowa 280 (1856).

¹⁵ *Knorr v. Beardsley*, 240 Iowa 828, 856-57, 38 N.W.2d 236, 252 (1949).

and it is not necessary that the title shall be an index of the details of the act, nor that every provision of the several sections of the statute be enumerated in the title.¹⁶

It is apparent that one bill may contain numerous provisions appropriating funds "so long as they are of the same nature and come legitimately under one general denomination or object"¹⁷ and still comply with the constitutional limitations.

II. AUTHORITY AND OBLIGATIONS OF THE GOVERNOR

A. *Items Within an Appropriation Bill*

1. *In General*

The governor's power is, by the terms of the Iowa amendment, confined to the approval or disapproval of items within an appropriation bill and does not permit item veto of any other bills.¹⁸ The Supreme Court of Texas, in *Fulmore v. Lane*, stated:

Nowhere in the Constitution is the authority given the Governor to approve in part and disapprove in part a bill. The only additional authority to disapproving a bill in whole is that given to object to an item or items, where a bill contains several items of appropriation. It follows conclusively that where the veto power is attempted to be exercised to object to a paragraph or portion of a bill other than an item or items, or to language qualifying an appropriation or directing the method of its uses, he exceeds the constitutional authority vested in him, and his objection to such paragraph, or portion of a bill, or language qualifying an appropriation, or directing the method of its use, becomes ineffective.¹⁹

2. *Effect of Exceeding Authority*

Where the governor has exceeded his authority in attempting to veto a portion of a bill which is not an appropriation bill, or a portion of an appropriation bill other than an *item* of such a bill, two results are possible. In states where the constitution requires the governor's affirmative approval of a bill before it becomes a law, the attempted partial veto, though ineffective, results in disapproval of the entire bill for lack of the required approval.²⁰ Conversely, in states whose constitution requires the governor's affirmative disapproval (*i.e.* if he does nothing the bill becomes law), the attempted par-

¹⁶ 202 Iowa 1019, 1034, 210 N.W. 139, 145 (1926). *Accord*, *Green v. City of Mt. Pleasant*, 256 Iowa 1184, 1198-99, 131 N.W.2d 5, 15 (1964).

¹⁷ *Ackley School Dist. v. Hall*, 113 U.S. 135, 142 (1884). *But see OKLA. CONST. art. 5, § 57*, specifically excluding appropriation bills from the requirement that each bill shall contain but one subject.

¹⁸ *See, e.g., Patterson v. Dempsey*, 152 Conn. 431, 207 A.2d 739 (1965).

¹⁹ 104 Tex. 499, 512, 140 S.W. 405, 412 (1911).

²⁰ *State ex rel. Finnegan v. Dammann*, 220 Wis. 143, 264 N.W. 622 (1936).

tial veto is ineffective and the bill as a whole becomes law.²¹ These examples do not apply where, after sending the bill to the governor, the legislature adjourns *sine die*.

The Iowa Constitution provides: "If any bill shall not be returned within three days after it shall have been presented to him, Sunday excepted, the same shall be a law"²² Therefore, should Iowa's governor exceed his authority and attempt to disapprove an item in a nonappropriation bill or disapprove a part of an appropriation bill which is not an *item*, the probable result would be that the bill as a whole would become law as though he had approved it or allowed it to become a law without his approval.

3. Terminology

To avoid conflict between the three branches of government it is apparent that the governor, the legislature and the courts must be able to determine what constitutes an appropriation, appropriation bill and an item.

Appropriation in the constitutional sense means "setting apart a portion of the public funds for a public purpose."²³ More precisely, appropriation may be defined as "the setting aside from the public revenue of a certain sum of money for a specific 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."²⁴ Once an allocation of money is determined to be an appropriation, it would seem that a bill containing a qualified provision would be an appropriation bill, but such is not the case, for simply because a bill appropriates money does not render that bill an appropriation bill as the term is contemplated in the item veto amendment.²⁵ The United States Supreme Court, in *Bengzon v. Secretary of Justice* held:

The term "appropriation act" obviously would not include an act of general legislation; and a bill proposing such an act is not converted into an appropriation bill simply because it has had engrafted upon it a section making an appropriation. An appropriation bill is one the primary and specific aim of which is to

²¹ *Wheeler v. Gallet*, 43 Idaho 175, 249 P. 1067 (1926); *Peebly v. Childers*, 95 Okla. 40, 217 P. 1049 (1923).

²² *Iowa Const.* art. III, § 16.

²³ *State v. La Grave*, 28 Nev. 25, 41 P. 1075, 1076 (1895). *See also Black & White Taxicab Co. v. Standard Oil Co.*, 25 Ariz. 301, 218 P. 139 (1923), holding that it is an element of the definition of "appropriation" that the money be appropriated out of the general revenues of the state. There the governor exceeded his constitutional authority by vetoing a tax provision which directed that the funds go directly to the counties without becoming part of the state's general fund.

²⁴ *Hunt v. Callaghan*, 32 Ariz. 235, 257 P. 648, 649 (1927).

²⁵ *Dickson v. Saiz*, 62 N.M. 227, 308 P.2d 205 (1957). *See also State v. Rogers*, 26 Wash. 417, 64 P. 515, 516 (1901), where the court in differentiating between a general appropriation bill and one merely including an appropriation as an incident, held that it is not a conceded fact that any bill appropriating money was a general appropriation bill. "It is true" stated the court, "that all general appropriation bills provide money for certain purposes, ordinarily for the expenses of the government and public institutions, and incidentally may provide for the application of the appropriation, and specify the purchase of materials required in running the same, and how it shall be done; yet such incidental specifications do not deprive the appropriation bill of its nature as general."

make appropriations of money from the public treasury. To say otherwise would be to confuse an appropriation bill proposing sundry appropriations of money with a bill proposing sundry provisions of general law and carrying an appropriation as an incident.²⁶

However, to qualify as an appropriation bill an act must contain an appropriation.²⁷ In *State ex rel. Finnegan v. Dammann*,²⁸ the governor of Wisconsin attempted to veto part of a bill which amended a code provision providing appropriations. Such a bill, the court held, is not an appropriation bill and to find otherwise would be to extend the scope of the constitutional amendment far beyond the evils it was designed to correct.

Therefore, an appropriation bill is a measure before a legislative body authorizing an expenditure of public funds and stipulating the amount, the manner in which that amount is to be expended, the purpose of the various items of expenditure²⁹ and any other matters germane to the appropriation.³⁰

The term "item" is definitive of that portion of an appropriation bill which, under the amendment, the governor is empowered to sever from the bill by his disapproval thereof. The courts have generally agreed that the governor is limited to vetoing items specifically appropriating money and not some general provision of law incorporated in the appropriation bill.³¹ As that portion of the bill which is not disapproved will become law, the court in *Commonwealth v. Dodson* reasoned that the term "item" as used in the state constitution must refer to:

[S]omething which may be taken out of a bill without affecting its other purposes and provisions. It is something which can be lifted bodily from it rather than cut out. No damage can be done to the surrounding legislative tissue, nor should any scar tissue result therefrom.³²

If any part could be disapproved, the residue which would become law might be something not intended by the legislature and against the will of the majority of each house.³³ It is obvious that the item veto power does not contemplate striking out conditions and restrictions alone as items, for that

²⁶ 299 U.S. 410, 413 (1937).

²⁷ *State ex rel. Finnegan v. Dammann*, 220 Wis. 143, 149, 264 N.W. 622, 624 (1936), notes that an appropriation bill which does not deal with an appropriation either in the title or the body of the act "would not be considered such a bill either in common speech or the language of those who deal with legislative or governmental matters."

²⁸ 220 Wis. 143, 246 N.W. 622 (1936).

²⁹ *Id.* See also *State v. State Bd. of Fin.*, 69 N.M. 430, 367 P.2d 925 (1961).

³⁰ *State ex rel. Teachers & Officers v. Holder*, 76 Miss. 158, 23 So. 643 (1898).

³¹ *Bengzon v. Secretary of Justice*, 299 U.S. 410, 414-15 (1937), states:

An item of an appropriation bill obviously means an item which in itself is a specific appropriation of money, not some general provision of law which happens to be put into an appropriation bill. Provisions granting power to the executive to veto an item or items of an appropriation bill are to be found, in various forms of expression, in many of the state constitutions.

See also Patterson v. Dempsey, 152 Conn. 431, 207 A.2d 739 (1965).

³² 176 Va. 281, 290, 11 S.E.2d 120, 124 (1940).

³³ *Id.*

would be affirmative legislation,³⁴ whereas the governor's veto power is a strictly negative power, not a creative power.³⁵ Therefore, an item "in an appropriation bill is an indivisible sum of money dedicated to a stated purpose. It is something different from a provision or condition, and where conditions are attached, they must be observed"³⁶

The governor, in striking an item, must remove the conditions and restrictions relating to a specific item or indivisible sum of money which has been appropriated for a specific purpose.³⁷ Also, the item must be such as can be bodily removed without changing the overall meaning of the bill, *i.e.* without doing damage "to the surrounding legislative tissue."³⁸ When, therefore, an entire bill contains but one item under the foregoing definitions the governor must approve or disapprove that bill in its entirety. This reasoning has been applied where an appropriation bill "entire, inseparable, relating to one thing, containing several provisions, all complementary to each other, and constituting one whole"³⁹ is submitted to the governor. To permit such a bill "to be picked to pieces, and some of the pieces approved, and others vetoed, is to divide the indivisible; to make of one, several; to distort and pervert legislative action, and by veto make a two-thirds vote necessary to preserve what a majority passed."⁴⁰

The legislature could take advantage of the fact that the governor could not sever less than an item by drafting a bill containing one lump sum appropriation and declaring that the sum is to be used for the various purposes thereafter named and indicating the amount to be expended for each. Where the legislature of Illinois passed a bill drafted in this manner, the court held that such a bill was not in compliance with the constitution. To find the bill as a whole to be one distinct item would be to nullify the power given by the constitution to the governor to withhold his approval from distinct items and he could disapprove any of the smaller amounts.⁴¹ The Illinois Constitution does permit the governor to veto any "items or sections"⁴² and in this respect seems to give the governor of that state greater freedom in so far as a section is found to be less than an item.⁴³ It would seem probable that should the Iowa legislature attempt to coerce the governor into approving a lump sum appropriation by combining purpose and amount, the court would interpret the term "item" liberally to preserve the purpose of the item veto amendment.

³⁴ *Fairfield v. Foster*, 25 Ariz. 146, 214 P. 319 (1923); *Commonwealth v. Dodson*, 176 Va. 281, 296, 11 S.E.2d 120, 127 (1940). *See generally* *Annot.*, 35 A.L.R. 600 (1925).

³⁵ *State ex rel. Teachers & Officers v. Holder*, 76 Miss. 158, 23 So. 643 (1898); *The Veto Case*, 69 Mont. 325, 222 P. 428 (1924).

³⁶ *Commonwealth v. Dodson*, 176 Va. 281, 296, 11 S.E.2d 120, 127 (1940). *See also* *Callaghan v. Boyce*, 17 Ariz. 433, 153 P. 773 (1915); *Miller v. Walley*, 122 Miss. 521, 84 So. 466 (1920); *State ex rel. Teachers & Officers v. Holder*, 76 Miss. 158, 23 So. 643 (1898).

³⁷ *Black & White Taxicab Co.*, 25 Ariz. 381, 218 P. 139 (1923); *Callaghan v. Boyce*, 17 Ariz. 433, 153 P. 773 (1915).

³⁸ *Commonwealth v. Dodson*, 176 Va. 281, 290, 11 S.E.2d 120, 124 (1940).

³⁹ *State ex rel. Teachers & Officers v. Holder*, 76 Miss. 158, 182, 23 So. 643, 645 (1898).

⁴⁰ *Id.*

⁴¹ *People ex rel. State Bd. of Ag. v. Brady*, 277 Ill. 124, 115 N.E. 204 (1917).

⁴² *ILL. CONST.* art. 5, § 16.

⁴³ South Carolina and Washington have similar provisions.

B. Reduction of Amounts

The governors of thirty-two states are authorized by the language of their respective state constitutions to disapprove or veto only "items" in appropriation bills;⁴⁴ however, three state constitutions provide that the governor may reduce the amount of an item.⁴⁵ In the remaining twenty-nine states, it is generally agreed that the governor may not reduce items but must veto an item in its entirety.⁴⁶ "On the contrary," stated the court in *Fairfield v. Foster*, "we believe such a rule would transform the merely negative legislative power of the Governor into an affirmative one, and that it would be in consonance with neither the plain language of the Constitution nor the purpose of its makers."⁴⁷ The legislative branch, not the executive, is vested with the discretion to determine the amount which should be appropriated for any particular object.⁴⁸

In each state in which the court has allowed the governor to reduce an item, although this power was not specifically granted in the constitution, the qualification that appropriation bills must "embrace distinct items"⁴⁹ was included. Where the governor has been permitted to veto less than an entire item or to reduce the amount of an item, the courts have done so on the theory that, if the legislature could join several appropriations together making one item, the purpose of the amendment could be defeated.⁵⁰

C. Appropriation of Money

Another variation in the language of the item veto provisions between the various states is the use, in some states, of the term "item of appropriation

⁴⁴ Alabama; Alaska; Arizona; Arkansas; California; Colorado; Connecticut; Delaware; Florida; Georgia; Hawaii; Idaho; Iowa; Kansas; Louisiana; Maryland; Michigan; Minnesota; Montana; Nebraska; New Jersey; New York; Ohio; Oklahoma; Oregon; Pennsylvania; South Dakota; Tennessee; Texas; Utah; Virginia; West Virginia. Three state constitutions grant the governor authority to veto "part" of an appropriation bill: Kentucky; Mississippi; Wisconsin. Three others, New Mexico, North Dakota and Wyoming, allow the governor to disapprove "items or parts of items" and the Massachusetts Constitution goes one step farther and permits the governor to veto or reduce items or parts of items. The court in *In re Opinion of the Justices*, 249 Mass. 616, 212 N.E.2d 562 (1965), noted, however, the term "item or parts of items" referred to separable fiscal units and did not authorize the governor to disapprove a part merely of one item in an appropriation bill.

⁴⁵ Alaska; California; Tennessee.

⁴⁶ *Fairfield v. Foster*, 25 Ariz. 146, 214 P. 319 (1923); *Wood v. State Admin. Bd.*, 255 Mich. 220, 238 N.W. 16 (1931); *Fulmore v. Lane*, 104 Tex. 499, 140 S.W. 405 (1911).

⁴⁷ 25 Ariz. 146, 157, 214 P. 319, 323 (1923). *Accord*, *Strong v. People ex rel. Curran*, 74 Colo. 283, 220 P. 999 (1923).

⁴⁸ *Fergus v. Russel*, 270 Ill. 304, 110 N.E. 130 (1915).

⁴⁹ The item veto provisions of fourteen states include the phrase "appropriation of money, embracing distinct items." These are Colorado, Connecticut, Delaware, Florida, Idaho, Kentucky, Louisiana, Maryland, Montana, North Dakota, Oklahoma, Pennsylvania, South Dakota and Wyoming.

⁵⁰ *Green v. Rawls*, 122 So. 2d 10 (Fla. 1960); *Commonwealth ex rel. Elkin v. Barnett*, 199 Pa. 161, 48 A. 976 (1901). *See State ex rel. Jamison v. Forsyth*, 21 Wyo. 359, 133 P. 521 (1913). *Contra*, *Strong v. People ex rel. Curran*, 74 Colo. 283, 220 P. 999 (1923); *Nowell v. Harrington*, 122 Md. 487, 89 A. 1098 (1914); *Peebly v. Childers*, 95 Okla. 40, 217 P. 1049 (1923); *State Univ. v. Trapp*, 28 Okla. 83, 113 P. 301 (1911).

of money." Only ten states⁵¹ exclude this provision and provide that the governor may veto an "item of appropriation." In light of the generally accepted definition of an "item," this variation would seem to have no significance in so far as qualifying the power of the governor.⁵² Apparently there are no cases in which a governor attempted to veto an appropriation of property.

D. Reasons for Veto

The Iowa amendment provides: "Any item in an appropriation bill disapproved by the governor shall be returned, with his objections, to the house in which it originated." Several states⁵³ require that the governor give specific reasons for disapproving an item and if he fails to give his reasons, the attempted disapproval is ineffective to constitute a veto.⁵⁴ The courts in states with provisions similar to the Iowa amendment have held that the disapproval must be indicated specifically on the bill itself with reference to the specific items involved.⁵⁵ The constitutional requirements were met where "disapproved and vetoed" was written across the face of the item and "approved except as to the above items disapproved and vetoed" was written above the governor's signature.⁵⁶ There is no requirement that the objections be written separately or upon a different document.⁵⁷

E. Adjournment Sine Die

The adjournment *sine die* of the legislature before the governor has an opportunity to return an appropriation bill has given rise to much litigation. The item veto provisions in thirty-seven states do not appear to restrict the power of the governor to veto items after the legislature adjourns *sine die*.⁵⁸

In four of these states where the governor has returned a bill after ad-

⁵¹ Alabama, Alaska, California, Georgia, Iowa, Mississippi, Nebraska, Oregon, Texas and Virginia do not include the term "appropriation of money" in the item veto provisions.

⁵² The Supreme Court of Virginia, one of the states which does not include the "of money" provision, held in *Commonwealth v. Dodson*, 176 Va. 281, 296, 11 S.E.2d 120, 127 (1940): "An item in an appropriation bill is an indivisible sum of money dedicated to a stated purpose. It is something different from a provision or condition . . ." The United States Supreme Court in *Bengzon v. Secretary of Justice*, 299 U.S. 410, 414-15 (1936), held: "An item of an appropriation bill obviously means an item which in itself is a specific appropriation of money"

⁵³ Arizona; California; Connecticut; Kansas; Massachusetts; Oklahoma; Tennessee; Utah; West Virginia.

⁵⁴ *Dickinson v. Page*, 120 Ark. 377, 179 S.W. 1004 (1915); *State ex rel. Boynton v. French*, 133 Ky. 579, 300 P. 1032 (1931); *May v. Topping*, 65 W. Va. 656, 64 S.E. 848 (1909).

⁵⁵ *State ex rel. Sandaker v. Olson*, 65 N.D. 561, 260 N.W. 586 (1935).

⁵⁶ *Dickinson v. Page*, 120 Ark. 377, 179 S.W. 1004 (1915).

⁵⁷ *Id.*

⁵⁸ Those states which restrict the power of the governor to veto an item after adjournment *sine die* are Mississippi, New Jersey, South Carolina, Tennessee and West Virginia. See *Carter v. Henry*, 87 Miss. 211, 39 So. 690 (1905); *State ex rel. Teachers & Officers v. Holder*, 76 Miss. 158, 23 So. 643 (1898); *Arnold v. McKellar*, 9 S.C. 335 (1878); *Woodall v. Darst*, 71 W. Va. 350, 77 S.E. 264 (1912); *May v. Topping*, 65 W. Va. 656, 64 S.E. 848 (1909).

journment *sine die*, having exercised his veto or item veto power, the states' highest courts have held that the parts approved became law, and the parts vetoed were ineffective.⁵⁹ In effect the governor's veto, after adjournment *sine die*, is still effective and the legislature forfeits its right to reconsider those items disapproved.⁶⁰ In Iowa when a bill is presented to the governor in the last three days of the session, it becomes law only if he approves it within the thirty day limit.⁶¹ His approval is a requisite however, and a bill cannot become a law if the governor fails to sign it after adjournment of the legislature *sine die*.⁶²

In a case where a governor disapproved an item of a bill which was not an appropriation bill, thereby acting unconstitutionally, the bill was deemed to have failed in its entirety because it was not approved by the governor within the thirty day limit.⁶³

III. CONCLUSION

The item veto provisions in many state constitutions serve two distinct purposes. The governor's power to approve less than an entire appropriation bill, in those states which do not limit bills to one subject, may be used to disapprove "riders" attached to appropriation bills in the legislative process. In these states the purpose is to prevent the adoption of omnibus appropriation bills and the practice of jumbling together, in one act, incongruous subjects in order to force passage of provisions which would be defeated on their separate merits.⁶⁴ As Iowa has a provision which restricts each bill to one subject, "log-rolling" is not a problem.⁶⁵

In all states which have item veto provisions the governor's veto power is extended to permit him to remove from an appropriation bill those items of which he does not approve and to approve the residue of the bill. This eliminates the need for many governmental bodies to go without funds because of a veto of an entire appropriation bill. Such provisions also give the governor a tighter control over the expenditure of the public funds.

Though the governor's power is negative only, the item veto does give him a scalpel with which he may cut out items which have been the product of legislative debate and compromise. The free use of the item veto for this purpose, however, would soon yield diminishing returns as most legislators, knowing such a weapon exists, would require assurances that their compromise measures would pass unscathed.

⁵⁹ *Green v. Rawls*, 122 So. 2d 10 (Fla. 1966); *Mills v. Porter*, 222 P. 428 (Mont. 1924); *Sandaker v. Olson*, 65 N.D. 561, 260 N.W. 586 (1935); *State v. Zimmerman*, 233 Wis. 442, 289 N.W. 662 (1940).

⁶⁰ *State v. Zimmerman*, 233 Wis. 442, 289 N.W. 662 (1940).

⁶¹ IOWA CONST. art. III, § 16.

⁶² 1967 OP. IOWA ATT'Y GEN. No. 67-11-1.

⁶³ Opinion of the Justices, 210 A.2d 852 (Del. 1965).

⁶⁴ *Commonwealth ex rel. Elkin v. Barnett*, 199 Pa. 161, 48 A. 976 (1901).

⁶⁵ IOWA CONST. art. III, § 29.

Those items which are disapproved may be enacted into law notwithstanding the governor's objections if passed, under the provisions of the Iowa amendment, by two-thirds of the membership of both houses. Similar provisions are found in all states which have an item veto provision. The power granted does not have the effect of making the governor a super-legislature but insures that those appropriations needed for the smooth and efficient operation of the governmental machinery will not be delayed for want of a means to eliminate items which do not meet with the governor's approval.

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