

The Item Veto — Partisan Advantage or Fiscal Restraint?

Imagine this scenario: a governor of one political party is often at odds with the legislature, which is dominated by members belonging to another political party. The legislature often approves bills the governor doesn't want, but especially galling to the governor is the legislature's practice of placing odious features in otherwise much-needed legislation. In this particular case, the legislature approves the governor's proposal for a law honoring motherhood and adopting apple pie as the official state dessert, but before final passage, powerful farm interests include a provision declaring that "there shall be no tax on cattle." The governor, who campaigned on the motherhood-and-apple-pie issue, has no choice but to grit his teeth and accept the bad with the good, because he has no veto. It's a classic case of what can happen in North Carolina.

How about this scenario: Another governor in another state faces the same sort of opposition in the legislature, but this governor has a powerful weapon: an item veto. Like governors in 42 other states, this governor can use the item veto to excise unwanted features, like the tax loophole that could cost the state treasury millions of dollars. But taken to its extreme, this item veto can make for even more mischief. Suppose that one of the governor's top cronies owns a brewery. Under at least one state Supreme Court interpretation, the governor could not only change simple legislative intent with an item veto, but also could create new policy. In this case, thanks to the help of the Wisconsin Supreme Court, the governor could zap the legislature and pay off a political debt if he chose to. "For instance, the phrase 'there shall be no tax on cattle' could become 'there shall be no tax on ale' by striking the t's and the c in cattle," notes *State Legislatures* magazine in a hypothetical look at the benefits and disadvantages of the item veto.¹

Those are the two extremes: North Carolina, the only state in the nation with no veto,

and Wisconsin, which has the nation's most liberal interpretation of the item veto. While all but seven states have some form of item veto, legislative experts in recent years have come to criticize its use as a policymaking tool rather than as the device of fiscal restraint that it was created to be.

Item vetoes were first created in the Constitution of the Confederate States of America during the Civil War, and during the Age of Spoils that followed, several states incorporated the item veto in their constitutions.² Now 43 states have such a veto. Tony Hutchison, a staff member with the National Conference of State Legislatures, observes that "modern governors have turned a tool of fiscal restraint into a tool of one-upmanship," and says many states should "redesign their item veto to fit the politics of today."³

That view is echoed by a national study of the line-item veto. This study, published by *Public Administration Review*, found that [i]t was easier to portray the item veto as an instrument of the executive increasing his or her legislative powers rather than as an instrument for [fiscal] efficiency," and that "the item veto probably has had minimal effect on making legislatures or state government fiscally more restrained."⁴

Item veto is not an issue in the current debate in North Carolina, however. The state Senate killed the line-item veto by tabling it on a 35-13 vote that followed party lines on March 2, 1989.

—Jack Betts

¹Tony Hutchison, "Legislating Via Veto," *State Legislatures* magazine, National Conference of State Legislatures, Jan. 20, 1989, p. 21.

²House Committee on Rules, 99th Congress, "Item Veto: State Experience and Its Application to the Federal Situation," Committee Print 1986, pp. 6-7.

³Hutchison, pp. 21-22.

⁴Glenn Abney and Thomas Lauth, "The Line-Item Veto in the States: An Instrument for Fiscal Restraint or an Instrument for Partisanship?" *Public Administration Review*, Vol. 45, No. 3, May/June 1985, pp. 372 and 377.