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EXECUTIVE VETOES OF BILLS PASSED BY THE 1981 WISCONSIN LEGISLATURE

Introduction

This bulletin contains the veto messages of Governor Lee Sherman Dreyfus affecting legislation passed by the 1981 Wisconsin Legislature during Floorperiod III (September 30 through October 30, 1981).

STATUS OF LEGISLATION

During the 1981 regular, special and extraordinary legislative sessions from January 5, 1981 through January 16, 1982, there were 1,698 bills (717 Senate and 981 Assembly bills) introduced, of which 112 bills were concurred in by both houses. Through November 27, 1981, Governor Dreyfus has taken action on all 112 bills, approving 109 (including the partial veto of 6 bills: SB-10, SB-22, NSSB-1, AB-66, AB-272 and AB-800) and vetoing 3 bills (AB-320, AB-406 and AB-616). As of January 22, 1982, the Legislature has sustained the partial vetoes of Chapter 1, Laws of 1981 (Senate Bill 10), several partial vetoes of Chapter 20, Laws of 1981 (Assembly Bill 66), the partial vetoes of Chapter 93, Laws of 1981 (NSSB-1) and the complete veto of 1981 Assembly Bill 320; and has overridden the partial veto of Chapter 21, Laws of 1981 (Senate Bill 22).

Legislative action is pending on: 1) several of the partial vetoes of Chapter 20, Laws of 1981 (Assembly Bill 66), 2) the partial vetoes of Chapter 86, Laws of 1981 (Assembly Bill 800), 3) the partial vetoes of Chapter 96, Laws of 1981 (Assembly Bill-272), and 4) the complete vetoes of Assembly Bills 406 and 616.

For information on the partial vetoes of Chapter 20, Laws of 1981, see *Wisconsin Brief 81-6*; on the partial vetoes of Chapter 93, Laws of 1981, see *Wisconsin Brief 81-10*; and on the veto of Assembly Bill 406, see *Wisconsin Brief 81-9*.

VETO BULLETIN FORMAT

For the pending vetoed bill (AB-616), this bulletin contains: 1) a brief identification; 2) the vote on final passage in each house and the page number of the loose-leaf journals referring to the vote ("S.J." stands for SENATE JOURNAL; "A.J." stands for ASSEMBLY JOURNAL); 3) the text of each veto message by Governor Dreyfus from the ASSEMBLY JOURNALS of either August 19 or December 2, 1981; and 4) the Speaker's referral.

For the pending partially vetoed bills (AB-272 and AB-800), in addition to a brief bill identification and vote on final passage, this bulletin contains, for each item, information in the following sequence:

(1) **Governor's written objections.** The text of the written objections to 1981 Assembly Bills 272 and 800 by Governor Lee Sherman Dreyfus have been copied from the ASSEMBLY JOURNALS of either November 19 or December 2, 1981.

(2) **Speaker's referrals.** The referrals by Speaker Edward G. Jackamonis of each item of the vetoes for legislative study and review as indicated in the ASSEMBLY JOURNAL of January 20, 1982.

(3) **Bill segments cited.** A reproduction of the segments of 1981 Assembly Bill 272, as shown in the published sliplaw of Chapter 96, Laws of 1981, and 1981 Assembly Bill 800, as shown in the published sliplaw of Chapter 86, Laws of 1981, assigned to each item as enumerated in the Speaker's Referrals. The material vetoed is indicated by a distinguishing overlay — like this. Where a single segment is assigned to several items as referred by the Speaker, the part relevant to a specific item is indicated by black lines.

I. COMPLETELY VETOED BILL

Assembly Bill 616: Reapportionment of Congressional Districts

The Assembly adopted Assembly Substitute Amendment 1 (as amended by Assembly Amendment 4) to Assembly Bill 616 by a vote of 71 to 26, A.J. 10/6/81, p. 1126, and passed the bill, as amended, by a vote of 70 to 27, A.J. 10/6/81, p. 1126. The Senate, in turn, adopted Senate Amendment 2 by a voice vote, S.J. 10/23/81, p. 996, and Senate Amendment 6 by a vote of 17 to 15, S.J. 10/23/81, p. 999, and concurred in Assembly Bill 616, as amended, by a vote of 19 to 14, S.J. 10/23/81, p. 1002. The Assembly then concurred in Senate Amendment 2 by a vote of 66 to 28, A.J. 10/28/81, p. 1551, and Senate Amendment 6 by a vote of 63 to 31, A.J. 10/28/81, p. 1552.

Prepared by Clark G. Radatz, Research Analyst.

Assembly Bill 616 was vetoed by the Governor on 11/27/81.

Text of the Governor's Veto Message

November 27, 1981.

To the Honorable, the Assembly:

I have vetoed Assembly Bill 616. After consulting with a broad cross section of interested parties, I have concluded that the Legislature can do better and it ought to have an opportunity to try.

There is the risk that the Legislature will produce a more partisan plan than the one before me. But I am willing to take that risk because enough legislators of both parties have shown a willingness to try. There remains plenty of time to do so without relying on the courts.

Nearly a year ago I suggested five guidelines for reapportionment: one person/one vote, recognition of neighborhoods, compactness, electoral competitiveness, and reduction in citizen confusion. While these are difficult to define with precision, only the equal population guideline has been truly met and possibly too strictly followed to the detriment of the other criteria.

Under this bill nearly a quarter of the state's counties are divided. The Sixth District bisects the state from Washington Island to within shouting distance of LaCrosse. The Ninth District divides not only Shorewood, but a ward in that community. The purpose of this bill clearly is not voter ease, understanding and effective impact. It is accommodation among both Republican and Democrat political forces. I am convinced a plan can be adopted which better balances the people's interests with the political realities of the legislative process. Bills were before the Legislature to do so.

The best known example is the one put forth by the Democrats under Representative Thomas Hauke who is co-chairman of the Reapportionment Committee.

Redistricting should result in better representation of the people's views through competitive elections. The people want their vote to count for something.

My office is willing to work with the Legislature to better ensure that people's votes do count.

.....
Speaker's referral.

To Committee on Rules.

II. PARTIALLY VETOED BILLS

Assembly Bill 272 (Chapter 96, Laws of 1981): State Retirement System Merger Implementation

The Assembly adopted Assembly Substitute Amendment 1 (as amended by Assembly Amendment 1) to Assembly Bill 272 by a voice vote, A.J. 10/20/81, p. 1340, and passed the bill, as amended, by a vote of 69 to 28, A.J. 10/22/81, p. 1404. The Senate, in turn, adopted Senate Amendments 1 and 5 to Assembly Bill 272 by voice votes, S.J. 10/29/81, p. 1078 and p. 1080, and concurred in Assembly Bill 272, as amended, by a vote of 28 to 4, S.J. 10/29/81, p. 1082. The Assembly then concurred in Senate Amendment 1 by a vote of 79 to 18, A.J. 10/30/81, p. 1644, and Senate Amendment 5 by a vote of 93 to 2, A.J. 10/30/81, p. 1644.

Assembly Bill 272 was approved in part and vetoed in part, and the part approved became Chapter 96, Laws of 1981, published in the *Wisconsin State Journal* on 12/5/81.

Part 1: Text of the Governor's Veto Message

November 27, 1981

To The Honorable, the Assembly:

I have signed AB 272, the retirement fund merger bill, and deposited it with the Secretary of State. I have exercised my constitutional power to item veto on several issues. This will finally complete the merger of the state's three public retirement systems. It should simplify legislative consideration of retirement matters by preventing leapfrog benefit approval, increase the understanding of participants and the public, and eventually reduce administrative costs. The bill also provides basic equity of benefits among the three formerly separate systems.

Part 2: Vetoed Items

Subject Area: EARLY RETIREMENT

Item 1. Early Retirement

Governor's written objections.

I have vetoed in its entirety the early retirement provision. Because fringe benefits are mandatory subjects of bargaining, the provisions could lead to extensive state and local costs, for local governments a potentially major state mandate without money. This approach also seems counter to national trends which are encouraging later retirement. I recognize the advantage of early retirement options for certain individuals and for governments experiencing reductions in force. Therefore, I will support legislation which makes early retirement a permissive subject of bargaining as long as such a program is prefunded.

Speaker's referral.

Item Veto 1 — Relating to early retirement (section 22 of the bill).
To Joint Committee on Finance.

Cited segments of 1981 AB-272.

SECTION 24. Subchapters I to VI of chapter 40 of the statutes, as affected by chapter 20, laws of 1981, are repealed and recreated to read:

40.02 Definitions. In this chapter, unless the context requires otherwise:

(42) "Normal retirement date" means:

~~(e) The date the participant attains the age of 62 years for any creditable service which would otherwise be subject to par. (d) except for an election under s. 40.21 (7).~~

(f)

2. The employer elects to apply that date under s. 42.245 (2) (bm) or 42.78 (2) (bm), 1979 stats., prior to the effective date of this section (1981); **Vetoed in Part**

(g) The date applicable to the participant under pars. (a) to (f) at the earlier of either the date it is necessary to make any determination or to take any action relative to the participant for purposes of the retirement system or the date of termination of employment of the participant, notwithstanding the fact that a participant may have been in one or more different employment categories at any previous time except for the purpose of calculating an annuity. For the purpose of calculating an annuity, the normal retirement date for each category provided by pars. (a) to (d) applies to service which is subject to that category unless an earlier normal retirement date applies to the creditable service under par. ~~(e)~~ (f). For the purpose of calculating a retirement benefit for an executive participating employe qualifying only under sub. (30) (b) a normal retirement date of the date the executive participating employe attains the age of 62 years shall be applied to creditable service of the executive participating employe for which par. (d) would otherwise apply except the number of creditable service years to which that normal retirement date shall be applied may not exceed the number of executive service years of the executive participating employe. **Vetoed in Part**

40.05 Contributions and premiums.

(2) EMPLOYER RETIREMENT CONTRIBUTIONS. For Wisconsin retirement system purposes:

(a) Contributions shall be made by each participating employer for current service in a percentage of the earnings of each participating employe determined as though all employes of all participating employers are employes of a single employer but with a separate percentage rate determined for each of the categories specified under s. 40.23 (2) (b) and for subcategories within each category as determined by rule to be necessary for equity among employers, including a subcategory for employers electing under s. 40.21 (7). The rates shall be determined on the basis of the information available at the time the determinations are made, and on the assumptions the actuary recommends from time to time and the board approves, by deducting from the then present value of all future benefits to be paid or purchased from the employer accumulation reserve on behalf of the then participants the amount then credited to the reserve for the benefit of the members and the present value of future prior service contributions of the employers determined in accordance with par. (b), and dividing the remainder by the present value of the prospective future compensation of all participants. **Vetoed in Part**

40.21 Participating employers; early normal retirement date election.

(7) (a) The governing body of an employer may adopt a resolution electing to apply a normal retirement date of the date a participant attains 62 years of age for creditable service which is otherwise subject to s. 40.02 (42) (d) and the date a participant attains 52 years of age for creditable service which is otherwise subject to s. 40.02 (42) (a). The election applies only to creditable service with the employer which accrues on or after the effective date of the election except the governing body may specify in the resolution and the official notice of election to the department that the election applies to 100%, 75%, 50% or 25% of creditable service accrued to each of its employees prior to the date the election takes effect for participants who are employed by the employer on the effective date of the election, if the same percentage of each employee's creditable service is recognized. The election is effective on the first January 1 after the official notice of election under this subsection is received by the department, if the notice is received on or prior to November 15, or the 2nd January 1 after the official notice of election is received by the department, if the notice is received by the department after November 15. Any action under this subsection which applies to:

1. State employees shall be taken pursuant to a collective bargaining agreement under subch. V of ch. 111 or s. 230.12.
2. Employees who are represented by a labor organization which is recognized or certified under subch. IV or V of ch. 111 may be taken only pursuant to a collective bargaining agreement.

(b) Election may be made under par. (a) only if it applies to all employees of the employer who are, on the effective date:

1. Included in a particular collective bargaining unit which is represented by a labor organization which is recognized or certified under subch. IV or V of ch. 111;
2. Not included in a collective bargaining unit which is represented by a labor organization which is recognized or certified under subch. IV or V of ch. 111;
3. Teachers employed by the university of Wisconsin system; or
4. Protective occupation participants.

(c) If an election under par. (a) applies to creditable service accrued prior to the date the election takes effect, the employer contributions computed under s. 40.05 (2) shall be increased to reflect the change in the value of the prior creditable service, amortized over the remainder of the funding period provided for prior creditable service costs of that employer.

(d) Election under par. (a) may be revoked by the governing body of the employer for creditable service accruing after the effective date of the revocation. Revocation is effective on the first January 1 after the official notice of revocation is received by the department, if the notice is received on or prior to November 15, or the 2nd January 1 after the official notice of election is received by the department, if the notice is received by the department after November 15. Any action under this subsection which applies to:

1. State employees shall be taken pursuant to a collective bargaining agreement under subch. V of ch. 111 or s. 230.12.
2. Employees who are represented by a labor organization which is recognized or certified under subch. IV or V of ch. 111 may be taken only pursuant to a collective bargaining agreement.

(e) If election under this subsection applies to participating employees subject to s. 40.02 (42) (f) who have not terminated employment with the employer as of the effective date of the election, the election of the employer under s. 40.02 (42) (f) with respect to those participating employees is terminated and those participating employees are subject to this subsection and s. 40.02 (42) (e).

SECTION 65. Nonstatutory provisions; employee trust funds.

(10) NORMAL RETIREMENT DATE. Notwithstanding section 40.02 (42) of the statutes, as affected by this act, any participant with creditable service earned prior to the effective date of this subsection which would have been applied using a different normal retirement date than specified in section 40.02 (42) of the statutes, as affected by this act, shall continue to have that normal retirement date applied to that creditable service except section 40.02 (42) (f) of the statutes, as created by this act, shall apply to that creditable service if otherwise applicable.

Vetoed in Part

Subject Area: COURT TRANSCRIPT FEES

Item 2. Transcript Fees

Governor's written objections.

At the request of the Director of State Courts, I have also vetoed the provision which exempts transcript fees for court reporters under the definition of earnings. Such fees are reported as wages for Social Security and should be for the state retirement system as well.

Speaker's referral.

Item Veto 2 — Relating to exempting transcript fees for court reporters under the definition of earnings (section 24 of the bill).

To Joint Committee on Finance.

Cited segments of 1981 AB-272.

SECTION 24. Subchapters I to VI of chapter 40 of the statutes, as affected by chapter 20, laws of 1981, are repealed and recreated to read:

40.02. Definitions. In this chapter, unless the context requires otherwise:

(22) "Earnings":

(b) Does not mean payments made for reasons other than for personal services rendered to or for an employer, including, but not limited to:

1. Transcript fees paid a court reporter. Vetoed in Part

Assembly Bill 800 (Chapter 86, Laws of 1981): Taxation and Environmental Effect on the Mining of Metallic Minerals

The Assembly adopted Assembly Substitute Amendment 2 (as amended by Assembly Amendments 1 and 5) to Assembly Bill 800 by a voice vote, A.J. 10/27/81, p. 1524, and passed the bill, as amended, by a vote of 95 to 2, A.J. 10/27/81, p. 1524. The Senate, in turn, concurred in Assembly Bill 800 by a vote of 30 to 3, S.J. 10/30/81, p. 1096.

Assembly Bill 800 was approved in part and vetoed in part, and the part approved became Chapter 86, Laws of 1981, published in the Wisconsin State Journal on 11/27/81.

Part 1: Text of Governor's Veto Message

November 19, 1981

To The Honorable, the Assembly:

I have signed Assembly Bill 800 and deposited it with the Secretary of State. By bringing Wisconsin mining tax rates in line with other states, this bill will bring mining jobs to the economically distressed north while maintaining a strong commitment to protecting our environment and local communities from the impacts of mining. It reflects the careful work and compromise of environmentalists, mining interests, local governments and legislators. It is a tribute to all involved that we will be increasing jobs by allowing mining to proceed on an economically and environmentally sound basis.

I have exercised my partial veto authority to correct several technical problems.

Part 2: Vetoed Items

Subject Area: TAX DEDUCTIONS

Item 1. Royalty Deduction — Sunset Provision

Governor's written objections.

I have also vetoed the provision which sunsets the royalty deduction on July 1, 1987. When agreements are being negotiated, a stable set of ground rules should be in place on which all parties can rely. Of the five current deductions and nine new deductions added by AB 800, only this deduction has been sunsetted. I believe it serves no positive purpose, while in fact creating uncertainty and potentially undermining the development of an environmentally and community conscious mining industry in northern Wisconsin. If the purpose of the sunset was to force the Legislature to consider a royalty tax on individuals in addition to the income tax, the sunset is unnecessary because such a tax could be considered at any time. Therefore, I have vetoed this sunset date.

Speaker's referral.

Item Veto 1 — Relating to a sunset date for the royalty deduction (section 18 of the bill).
To Committee on Revenue.

Cited segments of 1981 AB-800.

SECTION 18. 70.375 (4) (L) of the statutes is amended to read:

70.375 (4) (L) ~~If metalliferous minerals were extracted at the mine 5 or more years prior to July 7, 1977, royalties~~ Royalties paid ~~before July 1, 1987~~ to owners of the mineral rights to the lands where the mine or an extension of the mine is located. In this paragraph, "mine" means an excavation in or at the earth's surface made for the purpose of extracting metalliferous minerals "owners" does not include the person mining or a person in which the person mining has an ownership or equity interest ~~of a person who has an ownership or equity interest in the person mining.~~

Vetoed in Part

Subject Area: TAX DEDUCTIONS

Item 2. Ownership or Equity Interests

Governor's written objections.

AB 800 creates a deduction under the net proceeds tax for royalties paid to individuals and corporations owning the mineral rights to lands on which mining is undertaken. The deduction is restricted to royalties paid to individuals or corporations having no ownership or equity interest in the taxpayer-mining company. The purpose of this limitation is to prevent firms from avoiding the net proceeds tax by shifting their mining profits to affiliates through royalty payments. The language, however, appears to bar a deduction for royalty payments made to parties only incidentally related to the mining company. For example, no deduction would be permitted for royalties paid by a mining company to a landowner from whom it leases mineral rights if the landowner holds just one share of that company's stock. Since this result was unintended, I have vetoed the wording relating to ownership or equity interests. Remedial legislation will be introduced to differentiate between an ownership interest held for purposes of control and that which is merely a passive investment.

Speaker's referral.

Item Veto 2 — Relating to ownership or equity interests (section 18 of the bill).
To Committee on Revenue.

Cited segments of 1981 AB-800.

SECTION 18. 70.375 (4) (L) of the statutes is amended to read:

70.375 (4) (L) ~~If metalliferous minerals were extracted at the mine 5 or more years prior to July 7, 1977, royalties~~ Royalties paid before July 1, 1987, to owners of the mineral rights to the lands where the mine or an extension of the mine is located. In this paragraph, "mine" means an excavation in or at the earth's surface made for the purpose of extracting metalliferous minerals "owners" does not include the person mining or a person in which the person mining has an ownership or equity interest ~~or a person who has an ownership or equity interest in the person mining.~~

Vetoed in Part

Subject Area: TAX DEDUCTIONS

Item 3. Consolidated vs. Income Tax Return

Governor's written objections.

Section 19 of AB 800 authorizes mining companies to deduct interest expense incurred in connection with constructing, developing or operating a mine in Wisconsin. This deduction is restricted to interest paid on funds borrowed from unrelated corporations. Thus, interest costs incurred on loans from a parent firm or affiliated companies cannot be used to reduce gross proceeds. The intent of this limitation is to ensure that mining companies do not reduce their taxable net proceeds to unacceptably low levels through inflated interest charges paid on money that is not obtained in "arm length" transactions. There is a flaw in the draft language in that only interest paid to affiliates eligible to file a consolidated federal income tax return is disallowed. Under section 1504 of the Internal Revenue Code, foreign companies are specifically excluded from the definition of "affiliated" corporation and thus cannot file on a consolidated basis with U.S. firms. As a result, the bill indirectly authorizes mining companies to deduct interest expense attributable to related foreign corporations. Since this result is contrary to legislative and executive intent, I have vetoed the wording relating to filing a consolidated U.S. income tax return.

Speaker's referral.

Item Veto 3 — Relating to filing a consolidated U.S. income tax return (section 19 of the bill).
To Committee on Revenue.

Cited segments of 1981 AB-800.

SECTION 19. 70.375 (4) (m) to (q) of the statutes are created to read:

70.375 (4)

(p) Interest determined as follows:

3. If a mine is owned by a corporation that is part of an affiliated group of corporations ~~eligible to file a consolidated federal income tax return~~, "interest" means the interest paid to nonmembers of the group.

Vetoed in Part