South Dakota Legislative Research Council

Issue Memorandum 95-10

THE AMENDATORY VETO: THE GOVERNOR AS PARTICIPANT IN THE LEGISLATIVE PROCESS

Background

The amendatory veto, if the term is not an outright misnomer, is at the very least quite different from the traditional gubernatorial veto. Evolving from medieval theories of government that characterized all sovereignty as emanating from a king who ruled by divine right, the royal veto was absolute and limited the exercise of the king's delegated regal authority by a council or parliament which met at his sufferance to assist him in governing his realm.

As political power became more diffused during the Renaissance and the Enlightenment, legislative bodies came to be viewed as having their own inherent power to legislate, and the royal veto came to be viewed as a check upon legislative excess. Finally, with the rise of representative republican democracies, the king was replaced by an elected executive who shared governmental responsibility with separate but equal legislative and judicial branches which regulated their relationship with each other through a complex array of checks and balances.

As federal and state governments expanded to provide an increased level of regulation and service, reformers began to sense the need for more cooperation between the executive and legislative branches. It was from the progressive agenda of early twentieth century political reform that the amendatory veto evolved.

As a quasi-legislative power, the amendatory veto recognizes the benefit of allowing the governor to protect legitimate executive interests during the legislative process. Frequently, the Legislature may enact good legislation which contains minor flaws or discrepancies. Any governor who has only the traditional general veto power would be faced with the dilemma of vetoing beneficial legislation or signing the legislation knowing that technical amendments or corrections were indicated. Many political theorists came to believe that some means should be provided to allow a governor to have some reasonable opportunity to suggest corrections or amendments to enacted legislation that had been submitted for signature. The amendatory veto was proposed to fill that need without granting the chief executive intrusive quasi-legislative powers.

Survey

Although the concept of the amendatory veto has been current since the late nineteenth century, most states have been reluctant to amend their constitutions to provide for it. Every state, except North Carolina, grants its chief executive a general veto power, and all but seven others recognize an item veto to reduce or eliminate individual budget expenditures. However, only Alabama, Illinois, Montana, New Jersey, South Dakota, Virginia, and Wisconsin have constitutional provisions for a true amendatory veto. Moreover, because the specifics of each state's version of the amendatory veto vary significantly, the provisions of each state will be briefly summarized before South Dakota's is examined in greater detail. It may be further noted that Alabama, Illinois, Montana, New Jersey, and Virginia all have a relatively pure form of amendatory veto, while those of South Dakota and Wisconsin are more limited and specialized.

The Constitution of Alabama in Article V, section 125, permits the governor to propose a specific amendment in the veto message. The Legislature may adopt or reject but may not amend the amendment. If both houses concur with the governor's amendment, the bill is sent back to the governor for signature. Both houses may reject the governor's amendment and override the veto. If one house adopts the amendment, and the other house declines the amendment, the declining house reconsiders the bill as if it had originated in that house and the process begins again.

Illinois' Constitution, Article 4, section 9, paragraph (e), provides, similarly, that the governor may return a bill with specific recommendations for amendment to the bill. The bill is then to be considered in the same manner as a vetoed bill, but the amendment may be accepted by a majority vote. The bill is then presented again to the governor for signature into law.

Article VI, section 10(2) of the Montana Constitution

states that "The governor may return any bill to the Legislature with his recommendation for amendment. If the Legislature passes the bill in accordance with the governor's recommendation, it shall again return the bill to the governor for his reconsideration. The governor shall not return a bill for amendment a second time." Interestingly, Montana goes on to provide by statutory authority (MCA 5-4-304) for the formation of a conference committee if either house fails to concur in the governor's recommendations.

The Constitution of New Jersey in Article 5, section 1, paragraph 14(f), allows the governor to recommend amendments to a bill. If the bill is amended and reenacted, the governor has specific time limits in which to sign the bill. The governor may not return a bill to the Legislature a second time.

In Virginia, pursuant to Article V, section 6, of the Constitution, the governor may disapprove any part of a bill and return it with recommendations for amendment to the Legislature. If the Legislature, by majority vote, adopts the suggested changes, or if both houses reject the suggestions, the bill is returned to the governor and becomes law only if approved by the governor.

The language of Article V, section 10, of the Wisconsin Constitution, as approved by the electorate in 1930, seems to have originally been intended to be an item veto rather than an amendatory veto: "Appropriation bills may be approved in whole or in part by the governor, and the part approved shall become law, and the part objected to shall be returned in the same manner as provided for other bills." However, a series of court cases, supplemented with enabling legislation, have so broadly construed this "partial veto" that its exercise has been formidable, and its interpretation has given rise to some of the most famous case law on the subject. In one noted instance in 1987, Governor Tommy G. Thompson vetoed an array of individual letters and punctuation, completely changing the intent of portions of the general appropriations bill. The Wisconsin governor is, on the other hand, clearly limited to "partially vetoing" appropriations bills and does not have similar authority over other legislation.

The South Dakota Style and Form Veto

South Dakota's experience with the amendatory veto began in 1972 when the people overwhelmingly approved a newly revised executive article which had been drafted and championed by the Constitutional Revision Commission. In the final paragraph of section 4, Article IV, the criteria for a style and form veto are specified: "Bills with errors in style or form may be returned to the Legislature by the governor with specific recommendations for change. Bills returned shall be treated in the same manner as vetoed bills, except that specific recommendations for change as to style or form may be approved by a majority vote of all the members of each house. If the governor certifies that the bill conforms with his specific recommendations, the bill shall become law. If the Governor fails to certify the bill, it shall be returned to the Legislature as a vetoed bill."

This specialized type of amendatory veto was then, and is still now, unique to South Dakota. Constituting an interesting compromise to the adoption of the unlimited amendatory veto, no other state has seen fit to follow South Dakota's lead in this regard.

The state's practical experience with the style and form veto began in 1977 with the institution of the practice by the Legislature of reserving a day or two at the end of session to consider gubernatorial vetoes. Usually scheduled for about two weeks after the conclusion of other legislative business, these "veto days" provided the first practical opportunity for the timeline necessary to effectuate the proper functioning of the style and form veto. Since 1977, there have been eighty-nine style and form vetoes:

Year	*Number of Style & Form Vetoes*
1977	1
1978	4
1979	7
1980	19
1981	11
1982	6
1983	0
1984	2
1985	3
1986	3
1987	4
1988	4
1989	1
1990	0
1991	2
1992	4
1993	0
1994	3
1995	15

On only four occasions has the Legislature failed to concur with the governor's suggested changes. Twice, the governor then signed the bill without the requested amendments; on the other two occasions, HB 1298 from the 1980 Legislative Session and SB 197 from the 1995 Legislative Session, the Governor vetoed the legislation.

The number of times that the style and form veto has been invoked makes a persuasive argument for its utility. In the majority of cases, the recommended changes involved relatively minor errors in grammar, punctuation, spelling, cross-referencing, and wording. Although the style and form veto is useful to eliminate such minor errors, the Code Commission, pursuant to SDCL 2-16-9, may also correct apparent errors when discovered. In some cases, more substantial errors were corrected which might otherwise have caused difficulties in interpretation or administration. In a few instances, reasonable minds might have differed as to whether the deficiencies cited were substantive or matters of style and form. The Legislature, however, ultimately retains the final determination as to whether the governor's requested changes go beyond style and form. If the Legislature believes that the proposed amendments are substantive, it need merely not approve them. Legislative concern about whether the Governor's suggested style and form corrections were actually substantive amendments may have contributed to the four occasions, cited earlier, when the Legislature failed to concur on a style and form veto.

Summary

The amendatory veto, whether plenary or limited to errors in style or form, is an interesting addition to the arsenal of modern legislative innovations. Although legislative experience with the amendatory veto has been generally positive, few states have amended their constitutions to provide for it--especially when compared with the line item veto which, over roughly the same period, has gained general acceptance in the states and on the federal level as well. Obviously, the dynamics of the amendatory veto are quite different from the item veto. Defective legislation may always be amended by subsequent legislation, which, especially in any state legislature with a long session, can serve as an adequate substitute for the amendatory veto. Nevertheless, South Dakota can be proud of its experiment with the style and form veto in Jefferson's "laboratories of democracy," the states.

This issue memorandum was written by Reuben D. Bezpaletz, Chief Analyst for Research and Legal Services for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.