The Style and Form Veto Revisited

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Introduction

The "style and form" veto is a form of "amendatory" veto. Unlike a regular veto that allows the Governor to reject a bill, the amendatory veto permits the Governor to suggest changes to any part of a bill as a condition of the Governor signing the legislation. Unique among the few states with an amendatory veto, the South Dakota Constitution limits this veto to addressing "errors in style or form." Given the continued use of style and form vetoes since the late 1970s, this issue memorandum reviews the founder's intent and evolution of gubernatorial use--and legislator response--of the style and form veto. This memorandum is a companion to Issue Memorandum 95-10.

Background

An original authority that has evolved substantially over the years, the Governor's veto power was found in the first South Dakota Constitution at Sections 9 and 10 of Article IV, the executive article. The veto authorized in Section 9 was a "regular" or "traditional" veto, whereby the Governor had near unlimited discretion[1] to prevent an entire bill from becoming law, subject to a two-thirds vote by each house overriding the veto. Section 10 vested the Governor with the additional authority to veto individual "items" in appropriations bills, rather than the entire bill, subject to legislative override. This authority is common to other states and is generally termed the "line item veto."

In 1972, resulting from the work of the Constitutional Revision Commission, a comprehensive overhaul of Article IV[2] received voter approval by a margin of 182,248 for and 96,944 against. In relevant part, the amendment consolidated the old veto sections--Sections 9 and 10--and added the style and form veto into a new Section 4. Section 4 has since been largely unchanged.[3] The regular veto power is retained in the first and second paragraphs, while the line-item veto is set down in the third paragraph. A fourth paragraph spells out the Governor's style and form veto authority as follows:

> 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 the Governor's 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.

[1] Measures referred to a vote of the people were expressly exempted from the veto power. *See* S.D. Const. Art. III, § 1 (1889).

[2] SL 1972, ch 1 (HJR 513).

[3] A 2002 constitutional amendment clarified the Governor's ability to "pocket veto," or indirectly veto without taking action, and extended the time allowed for the Governor to review passed bills. *See* 2002 S.D. Sess. Laws ch 2.

Minutes of the Commission's deliberations suggest the underlying intent behind this new authority:

> *Minutes of the 4th meeting of the Constitutional Revision Commission, Sept. 3-5, 1970, pg. 9:*
>
> > Dr. Farber[4] stated that some states have "executive amendment." This allows for minor changes by the Governor. If a word is misspelled, or clause left out, he can make the change and send it back to the Legislature. Then, they can accept or reject the change.
> >
> > Representative Clay[5] said that this type of thing happens a couple of times every session. This would be a good device. But you should allow the Legislature to reject the amendment without rejecting the bill.
>
> *Minutes of the 10th meeting of the Constitutional Revision Commission, Sept. 3-4, 1971, pg. 22:*
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> > Mr. Hirsch[6] stated that Subsection (c) allowed for executive amendment. It allows the Governor to return a bill with suggestions for change. Mr. Hirsch feels this gives the Governor too much power.
> >
> > Dr. Farber stated that this provision is used to correct minor errors in several states. It avoids having to veto the legislation and go through the process of passing the bill again. Mr. Hirsch feels there is a danger that the Governor may change the substance of the whole bill. There is no limitation on this. Representative Clay agreed that as presently written the provision allows the Governor to rewrite the bill. He feels the changes should be limited to technical matters.
> >
> > Mr. Hirsch suggested that the words "to correct such errors in style and form and not of substance" be inserted after the word "change." This would take care of the problem of the Governor changing the substance of a bill.

Despite the *Minutes* indicating Commission approval of Senator Hirsch's style and form limitation, the *Minutes* do not appear to indicate why the phrase "and not of substance" was left off of the final draft.[7] The *Minutes* do not otherwise suggest definitions for the key terms used in the amendatory veto language: error, style, or form. South Dakota's amendatory veto language appears to have derived from the Illinois Constitution's equivalent provision.[8]

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[4] Dr. William O. Farber, while chair of the Political Science Department at the University of South Dakota, was the founding Director of the South Dakota Legislative Research Council, serving from 1951 – 1955 on a part-time basis.

[5] Charles E. Clay, Vice Chairman of House Appropriations and Chairman of the Constitutional Revision Commission.

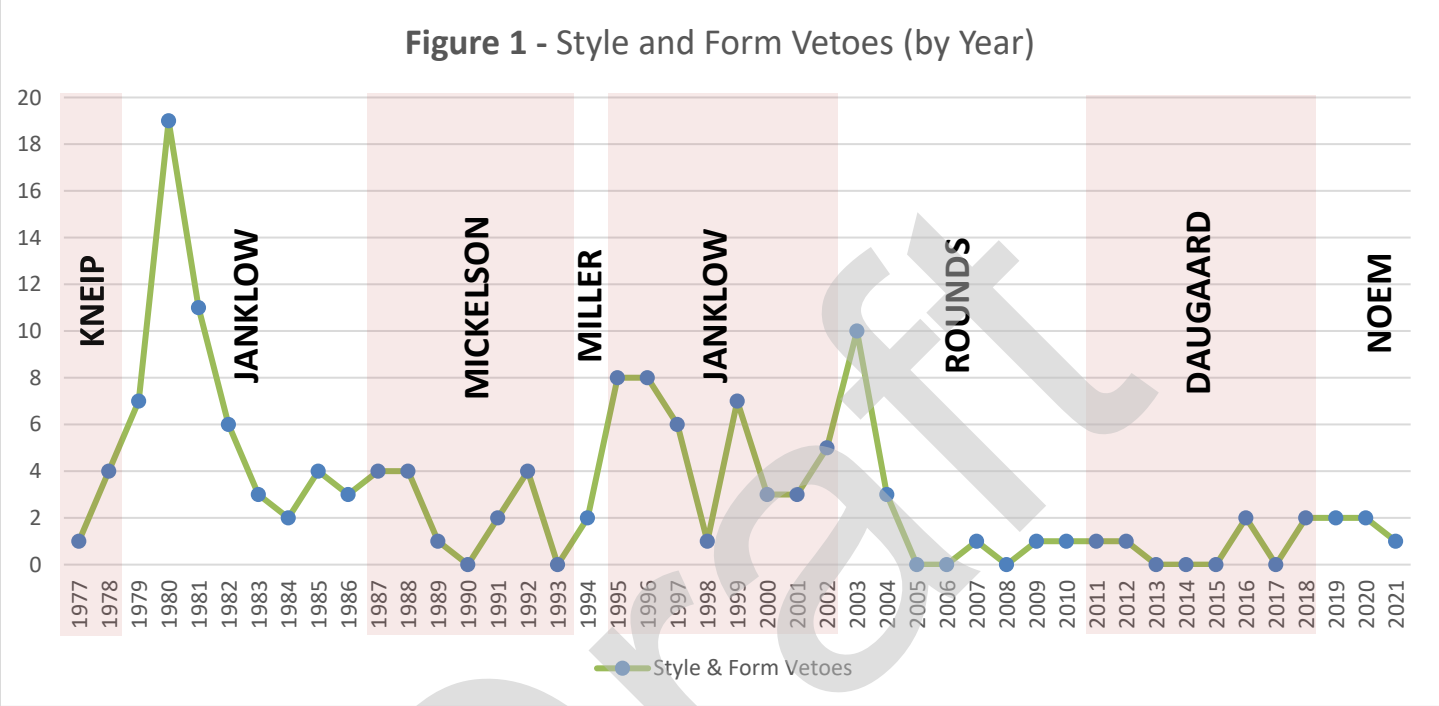
[6] Robert W. Hirsch, who had served as the Majority Leader and Chairman of the State Affairs and Judiciary Committees.

[7] In an appendix attached to the Commission minutes of the 10th meeting, it was stated that "[s]ubsection (c) was amended to allow executive amendments to correct 'errors of style and form.'"

[8] *Compare* S.D. Const., Art. IV, § 4, *with* Ill. Const. Art. IV, § 9(e).

The Evolving Use of the Style and Form Veto

With only the Constitution's plain language as a guide, the Governor's use of the style and form veto and the Legislature's reception of them have evolved over time. The style and form veto was not used in its first three years of existence. As shown below in **Figure 1**, however, the use of the style and form veto quickly ramped up, with its use falling into and out of favor with certain Governors, sometimes peaking in the early years of a Governor's tenure, and used sparingly over the last 15 years. Ultimately, it has been used 145 times.



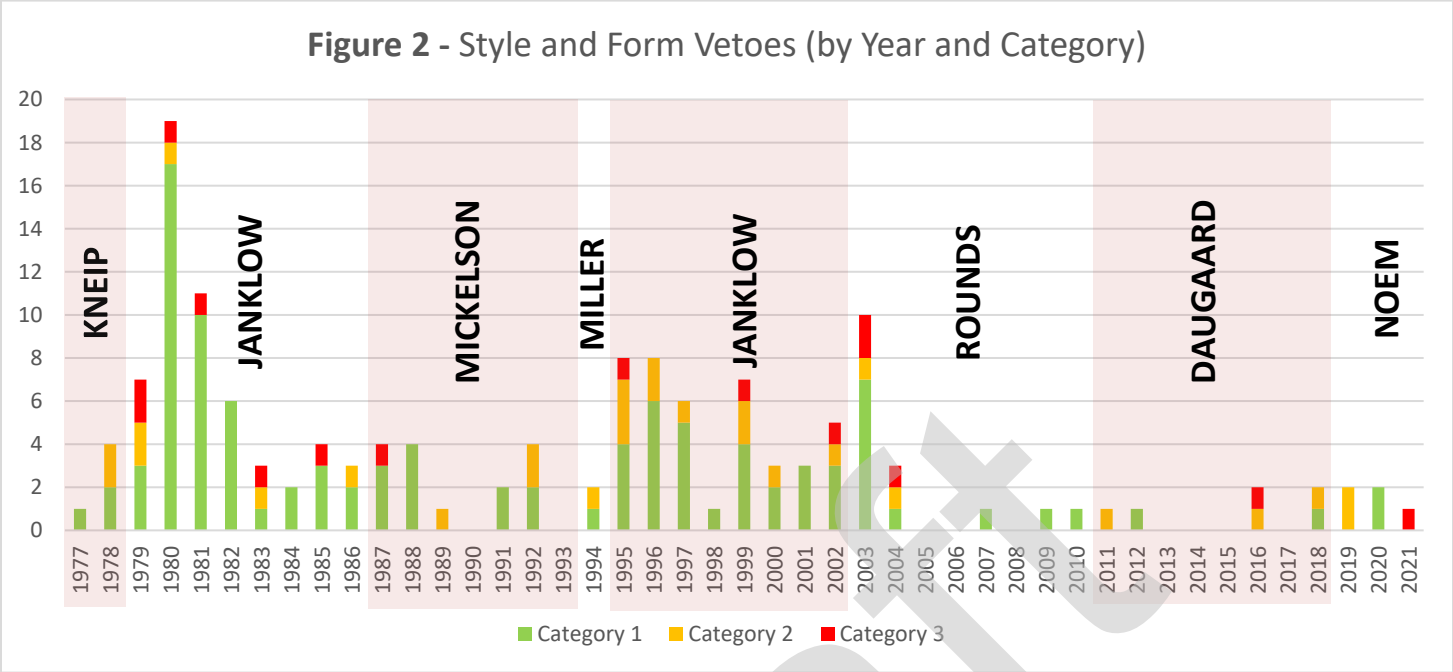
The plain language of the Governor's style and form veto messages have, at times, ranged from recommendations that squarely invoke the framer's intended scope, to vetoes that would alter most of the bill. Similarly, the Legislature has often unanimously supported the Governor's style and form veto, but has at times mustered enough nay votes to reject the Governor's recommendations. In even rarer cases, the Legislature then successfully overrode the Governor's veto.

Analyzing the plain language of the Governor's style and form veto message, three categories of style and form vetoes emerge, listed below in order from most-to-least historically supported by the Legislature:

1) Recommendations to correct a plain error or oversight, or that result in no substantive change;
2) Substantive recommendations to address clarity issues or possible violations of the Constitution, with those changes aligning with perceived legislative intent; and
3) Substantive recommendations to address a policy outcome or implementation concern.

The above categories also correspond to the degree of deference given by the Governor to the Legislature. The first category of veto expressly gives full deference to legislative intent. Plain errors and oversights are easily addressed, such that the underlying legislative intent is untouched. The second category is less straightforward, as the Governor needs to approximate legislative intent by seeking to clarify confusing language or overcome constitutional concerns. The third category requires little or no consideration be given to the underlying legislative intent.

In the figure below, the categories of style and form veto are presented by year:



Here again, certain patterns appear to emerge. First, almost every Governor expressly employed the style and form veto to address a negative policy or implementation outcome. Second, the reasoning, based on the plain language of the Governor's veto message, has shifted in the last 15 years, coinciding with a clear decrease in its use. In recent years, Governors have predominantly used the style and form veto to address perceived clarity concerns, or negative implementation or policy outcomes.

In the style and form veto's 44 years, the Legislature has been most receptive to those vetoes that correct a plain error or oversight, or that do not result in a change of substance, per the plain language of the veto message. These types of style and form vetoes generally take the following forms:

- Fixing typos and grammatical errors;
- Correcting errors in the title of officers or agencies;
- Remedying plain discrepancies between the title and body of a bill;
- Rectifying words that were mistakenly added or left out based on the House Journal or Senate Journal;
- Addressing inconsistencies in internal cross-references or key terms and phrases used in a bill;
- Requiring the proper attestations by the presiding officer on the bill submitted to the Governor;
- Amending an erroneous legal description of property in appropriations for property;
- Reconciling bills passed later in a session with clearly conflicting bills passed earlier in the session;
- Reworking cross-references to state or federal law that are inaccurate; and
- Assisting code counsel with ironing out irreconcilable amendments of the same Code section by two different bills in the same session.

Historically, the Legislature has taken a more dim view of style and form vetoes to avoid negative outcomes as perceived by the Governor. While not all of these "policy" style and form vetoes have been rejected by the Legislature, nine of the ten rejected style and form vetoes were expressly intended to address a policy or implementation outcome, as described in the table on the next page:

Table 1 - Style and Form Vetoes Not Concurred In by the South Dakota Legislature

Year - Governor	Bill Number - Title	Description of Veto	Legislative Action & Outcome
1980 - Janklow	HB 1298 - allow certain municipalities to tax motor fuel at a rate not to exceed one cent per gallon.	(H.J. 1279) Specific recommendations that reflected the Governor's belief that "the proper terminology" put a limit on gas tax at "one percent" rather than "one cent per gallon."	(H.J. 1280) The House decidedly rejected the style and form veto with 65 Nays and no Yeas. The Journal does not indicate the bill was vetoed by the Governor, but the bill was indicated as "veto[ed]" in the Cross Reference Table to the 1980 Session Laws.
1981 - Janklow	SB 96 - increase the amount of purchases as contracts by public corporation that do not require bid publication.	(S.J 850) General recommendation that a bill increasing a bid limit also increase a second bid limit in Code to keep both bid limits consistent, in keeping with what he perceived as the legislative intent of another bill passed earlier in the session.	(S.J. 1036) The Senate initially concurred in the style and form veto 24 Yeas - 8 Nays, but then notice of intent to reconsider was given, which prevailed (S.J. 1058), and the Senate rejected the style and form decisively, with 32 Nays and no Yeas (S.J. 1059). The Governor signed the Act, sans style and form edits, on March 20, 1981.
1985 - Janklow	HB 1371 - (General Appropriations Bill)	(H.J. 1269) Specific recommendation to move the expenditure authorization for community-based mental health programs from the Board of Charities and Corrections to Department of Social Services, because "ultimate responsibility " was with DSS, and then made 42 edits to various areas of the bill.	(H.J. 1273) The House concurred in the style and form veto 56 Yeas - 5 Nays. In the Senate, the style and form veto was soundly rejected with 31 Nays and no Yeas (S.J. 1143). The Journal Index indicates the Governor nevertheless signed the bill, without his changes, on March 16, 1985.
1987 - Mickelson	SB 188 - allow the student regent to vote in board of regents' meetings and to revise certain provisions relating to his term of office.	(S.J. 851) General recommendations, because of implementation issues, for new substance (1) making the Act effective on the first "normal vacancy on the Board of Regents," (2) specifying the student regent's residence as his/her voting residence, and (3) requiring the regent be confirmed by the Senate.	(S.J. 962) 3 Yeas - 30 Nays in the Senate. The Journal does not indicate that the bill was vetoed by the Governor, but the bill was indicated as "veto[ed]" in the Cross Reference Table to the 1987 Session Laws.
1995 - Janklow	SB 197 -define certain terms regarding public contracts, to restrict the activities of a construction manager regarding public contracts,and to require a construction manager to furnish a performance bond.	(S.J. 986) Specific language recommendations to extend prohibitions on contractors also serving as an architect, engineer, or construction manager on the same public project, to also prohibit the same firm from serving as both an architect or engineer and as a construction manager or contractor on a single public improvement project.	(S.J. 987) 11 Yeas - 24 Nays in the Senate. The bill was delivered back to the Governor in its original form (S.J. 1025), and was vetoed.
1999 - Janklow	SB 164 - prohibit certain practices by certain livestock packers and live poultry dealers.	(S.J. 802) Specific direction to strike Section 1, comprising a statement of legislative intent, on the basis that the statements "are editorial comments that, however heartfelt, have no place in the codified law of our State."	(S.J. 819) 16 Yeas - 18 Nays in the Senate. The Senate then overrode the Governor's veto (33 Yeas - 1 Nay). The House joined the Senate in overriding the Governor's veto (59 Yeas - 5 Nays, H.J. 956) and the bill became law (SL 1999, ch 205).
2004 - Rounds	HB 1191 - establish certain legislative findings, to reinstate the prohibition against certain acts causing the termination of an unborn human life and to prescribe a penalty therefor.	(H.J. 849) Specific language added to Section 16 for the purpose of preventing the possibility that, if successfully challenged in court, this bill would result in an effective repeal of all abortion regulations in state law.	(H.J 852) The House concurred in the recommendations (52 Yeas - 16 Nays), but the Senate did not, 17 Yeas - 18 Nays (S.J. 771). The Senate did not override the Governor's veto (17 Yeas - 18 Nays) and the bill died.
2016 - Daugaard	SB 64 - revise the voting authority of an alderman.	(S.J. 620) Made stylistic changes and added language changing the requirement of a majority vote to pass any ordinance or proposal, to only require a majority vote to pass an ordinance or proposal to expend or appropriate money. The Governor expressed this change was needed or the bill would "alter the law in unintended ways."	(S.J. 624) The Senate concurred in the recommendations (25 Yeas - 8 Nays), but the House did not (7 Yeas - 57 Nays, H.J. 883). The Governor vetoed the legislation on March 29, 2016.
2021 - Noem	HB 1217 - promote continued fairness in women's sports.	(H.J. 570) Specific language recommendations meant to address "vague and overly broad language [that] could have significant unintended consequences" by striking Section 2 (requiring an annual statement verifying biological sex) and Section 4 (establishing a cause of action for violations associated with the statute).	(H.J. 572) The House decidedly did not concur in the recommendations (2 Yeas - 67 Nays), but was unable to override the Governor's veto (45 Yeas - 24 Nays, H.J. 575).

In the tenth rejected style and form veto, issued in 2011, Governor Dennis Daugaard described his motivation as being solely "for clarity" and not for an express policy outcome or implementation issue, hence its separate treatment:

2011 - Daugaard	SB 202 - revise the State Workers' Compensation Advisory Council.	(S.J. 702) Added language that the chair of the Advisory Council was to be appointed by the Governor and sit as the ninth member of the Council, and have the right to vote on Council business.	(S.J. 202) The Senate concurred in the recommendations (31 Yeas - 4 Nays), but the House did not (32 Yeas - 34 Nays, H.J. 743). The Governor vetoed on April 4, 2011, after the Legislature had adjourned sine die on March 28, 2011.

The above chart is also noteworthy in the different processes used to address legislative non-concurrence in a style and form veto. In some cases, the house in question would vote to override the Governor's veto after non-concurrence. In other cases, the house would not vote to override and simply transmit the bill back to the Governor, who would then veto or pocket veto the bill. In still other cases, no apparent transmission to the Governor occurred after non-concurrence, presumptively killing the bill. In two instances, one of which involved the General Appropriations Bill, the Governor signed the bill after non-concurrence and transmission, despite the rejection of the Governor's style and form veto.

The Style and Form Veto Going Forward

As suggested by the history of the style and form veto, there are no hard-and-fast rules on its use or acceptance. The experience of all three branches reflects this. The South Dakota Supreme Court does not appear to have interpreted or construed the style and form veto. Various Governors have handled rejected style and form vetos differently. Despite its refusal of many policy- and implementation-focused style and form vetos, the Legislature concurred in style and form vetos that run the gamut of addressing the "minor errors" that the constitutional drafters of the provision envisioned, to the Governor making expressly legislative policy changes. The one historical consistency appears to be that the Legislature has never rejected a style and form veto that addressed only plain errors or oversights.

On the topic of consistency, going forward, the Legislature may choose to standardize its process for addressing style and form vetos, such as in Chapter 14 of the Joint Rules, *Manual of the Legislature*. One possible source for a standard process is Illinois. As noted above, the constitutional language for South Dakota's style and form veto largely derived from the Illinois Constitution. The Illinois amendatory veto, once executed by the Governor, gives the house of origin three choices: concur in the amendment (in which case the bill is sent to the other house to concur), override the veto (in which case the other house must also override or the bill dies), or if neither occur, the bill is dead. [9] Alternative processes may also be adopted that comport with the plain language of S.D. Const. Art. IV, § 4. Where such a process must include action taken by the executive branch, statute may be created to establish consistent practice between the executive and legislative branches, such as with SDCL 2-7-20.1.

In the final analysis, the biggest takeaway is that posited by Mr. Reuben Bezpaletz, former LRC Chief Research and Legal Analyst, in the Issue Memorandum 95-10: The style and form veto power establishes the Governor as a participant in the legislative process. This is no small statement, given the plenary legislative power. Therefore, the extent of this participation, and the other branches responses thereto, may be a key factor in inter-branch comity going forward.

[9] *See* Ill. Gen. Assembly, "How a Bill Becomes Law in Illinois," https://www.ilga.gov/commission/lis/98bill_law.pdf (last accessed May 27, 2021).

This issue memorandum was written by Justin Goetz, Chief Research and Legal Analyst, on August 31, 2021, for the Legislative Research Council. It is designed to provide background information on the subject and is not a policy statement made by the Legislative Research Council.