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COMMENT

THE ILLINOIS AMENDATORY VETO

The veto is the power of the chief executive of a state in a representative government to stop or inhibit enacted bills from becoming law.¹ A tripartite representative government, such as the federal model copied in all fifty states, can have one of three basic veto structures. The first and extreme structure is that of a government with a chief executive who does not possess any veto power whatsoever.² At the other extreme, the chief executive may possess a so-called “final veto” or “absolute veto.” For example, the constitution of a state may require that such a large majority of the legislature vote to override a veto that, given a two-party system and a reasonably balanced legislature, very few vetoes will ever be overridden.³ Between the two extremes there exists a veto power structured in such a way as to provide for a very real possibility of legislative override. It is upon this middleground that the veto powers of the Federal Constitution and the constitutions of most states may be found.⁴

Alexander Hamilton set forth the basic underlying reasons for the vesting of a veto power in a chief executive. He noted that the veto serves as “an indispensable barrier against the encroachments” of the legislative branch upon the executive branch.⁵ The veto is the traditional executive check upon the legislature in a system of checks and balances among co-equal branches of government. Hamilton also argued that an executive veto would serve the public good by furnishing “an additional security against the enaction of improper laws.”⁶ While Hamilton’s writings concerned the general or total veto, by which the chief executive denies approval to an entire bill, his arguments apply equally well to the amendatory veto.

The amendatory or conditional veto enables a chief executive to “condition” his approval of a bill upon the legislature’s accept-

¹. In Latin, “veto” means “I forbid.”
². North Carolina is the only state that does not provide for an executive veto. Internationally speaking, the Crown has no veto over the English Parliament.
³. See text accompanying notes 13-20 infra (discussing the prior veto power of this type in Illinois).
⁴. See ILL. CONST. art. IV, § 9.
⁵. THE FEDERALIST No. 66 (A. Hamilton).
⁶. THE FEDERALIST No. 73 (A. Hamilton).
ance of an “amendment” to the bill. Thus, the chief executive transcends the traditional separation of powers and becomes a direct participant in the legislative process. While technically an “outsider” to the legislature, the executive, by strategically using the amendatory veto, can become the most influential of legislators. The Illinois Supreme Court has stated that “when engaged in considering bills, the Governor is acting in a legislative capacity. For that purpose he is a part of the legislative department.” The extent to which the Governor’s participation in legislating violates the principle of separation of powers is a question which requires an in-depth analysis of the Illinois amendatory veto. The Illinois Constitution of 1970 provides for an amendatory veto, stating in part:

The Governor may return a bill together with specific recommendations for change to the house in which it originated. The bill shall be considered in the same manner as a vetoed bill but the specific recommendations may be accepted by a record vote of a majority of the members elected to each house.⁸

There are several reasons why the Governor may wish to utilize the amendatory veto. He may use it to correct mechanical errors resulting from a lack of coordination of the two houses on a bill, or even to correct typographical errors. The amendatory veto might also be used to coordinate separate amendments to the same section of a statute. In this sense the amendatory veto is a tool of accommodation which economizes the legislative process. In each of these situations, the Governor is really acting as a proofreader or critic of the legislature. More importantly, however, the Governor may wish to use the amendatory veto to suggest substantive amendments to an enacted bill of which he partially approves. In this same vein, the Governor may use his amendatory power to make a bill conform with other definitions and usages. Finally, the Governor may wish to use the amendatory veto to effect a major change in a bill of which he may not approve at all; in short, he may become the “sponsor” of a rewritten bill and thereby advance his legislative policies.⁹ This course of conduct has predictably provoked confrontation with the General Assembly.

Another reason for the utilization of the amendatory veto stems from the need to produce order out of the chaos of the traditional logjam of bills passed by the General Assembly in

⁸. 111. Const. art. IV, § 9(e).
the closing days of the legislative session;\textsuperscript{10} this logjam then moves into the Governor's office. The chance of error is great as members of the General Assembly attempt to "beat the clock" to obtain an early effective date for their bills.\textsuperscript{11} In this situation the amendatory veto serves as an administrative device by which such errors may be most expeditiously corrected.

The amendatory veto may also serve to correct the abuse of the conference committee report as a device for passing important legislation.\textsuperscript{12} The Governor can use the amendatory veto to delete or add important sections to those bills produced by conference committees.

Without the amendatory veto power, the Governor would be faced with an inflexible "either-or" situation. If a bill contained even the most basic typographical error, the Governor would be obliged to utilize his general veto. In that case either the bill sponsor would gather the required three-fifths majority vote of both houses to override the veto or he would have to write a new bill to be introduced in the legislature. This procedure involves a great waste of time and money. If a bill is sent to the Governor with parts both agreeable and disagreeable to him, it is more economical to allow the Governor a means of suggesting changes in the bill which may be accepted quickly by the legislature. But how extensive can those changes be?

**PRIOR ILLINOIS VETO POWER**

An understanding of the amendatory veto requires a basic understanding of the other vetoes possessed by the Illinois Governor: the executive veto, the line-item veto, and the item-reduction veto. The executive veto has been a part of the Governor's veto arsenal since Illinois' first days of statehood.\textsuperscript{13} This

\textsuperscript{10} To dismiss this action as mere procrastination is improper. This is the time that the political games are played as representatives jockey their votes for measures.

\textsuperscript{11} The "effective date" of a bill is the date on which the bill becomes a law for the purpose of enforcement. See text accompanying notes 126-34 infra. See generally Gherardini, *Effective Date of Laws*, 11 J. MAR. J. 363 (1978).

\textsuperscript{12} The conference committee report can be a device for passing important, controversial legislation. A bill is introduced in both houses. After it passes in the house of its origin, it is amended in the other house. The bill is then returned to the house of origin where the amendments must be adopted or refused. If the house of origin fails to recede and a stalemate results, the legislative leaders appoint several legislators (who will do what they are told) to a conference committee. The committee rewrites the bill and submits the conference committee report to the House and Senate for adoption. The report cannot be amended. Therefore, the bill is either accepted or rejected. If it passes, this is the final passage and the bill must be presented to the Governor.

\textsuperscript{13} See generally N. DEBEL, *THE VETO POWER OF THE GOVERNOR OF ILLINOIS* (1917) [hereinafter cited as DEBEL]; Negley, *The Executive
type of veto requires the Governor to veto an entire enacted bill and return it to the house of the legislature from which the bill originated. There, the General Assembly has the prerogative to attempt to override the veto, to do nothing, or to propose a new bill.

If there was a catalyst for the creation of an amendatory veto, it was probably the general executive veto. Under the 1870 constitution, the general executive veto became practically absolute in nature. This result can be explained in light of legislative practice under the 1848 constitution. The post-Civil War era Illinois General Assembly enacted a plethora of special legislation. For the first time, Governor J.M. Palmer exercised the veto power for policy reasons and, in 1869, vetoed seventy-two bills. However, the 1848 constitution allowed the Governor to use his veto only prior to adjournment and required only a bare majority to override the veto, and seventeen such overrides did occur. To eliminate this abuse of special legislation and the subsequent effortless overrides of the Governor’s veto, the Illinois Constitution of 1870 prohibited special legislation, required a two-thirds majority vote from each house to override the veto, and allowed the Governor to extend his veto beyond the sine die adjournment of the General Assembly. With cumulative voting in the House of Representatives assuring the weaker of the two parties of at least a one-third vote on any party-line issue, overrides of the Governor’s executive vetoes became extremely rare.

In 1883, the Illinois Governor was given a line-item veto. This type of veto allows the Governor to veto an item on an appropriations bill. In the celebrated case of Fergus v. Russel, the Illinois Supreme Court stated that the line-item veto could be used only to veto a line-item completely, not to reduce the item.

14. ILL. CONST. art. V, § 16 (1870).
15. From 1870 to 1969, only four vetoes out of 3,600 were overridden. Vetoes were overridden in 1871, 1895, 1936, and 1969. See Hanley, The 1970 Illinois Constitution and the Executive Veto, 5 PUB. AFF. BULL. 5 (1972) [hereinafter cited as Hanley].
16. DEBEL, supra note 13, at 79.
17. Id.
18. ILL. CONST. art. IV, § 22 (1870).
19. Id. art. V, § 16 (1870).
20. Id. Sine die adjournment is the final adjournment of a non-continuously meeting body. The effect of a post-sine die adjournment veto is to cut off legislative reconsideration of the veto. Governors under the 1818 and 1848 Illinois Constitutions could veto a bill only when the legislature was in session or had adjourned until a specified day. See Hanley, supra note 13, at 1-2.
21. ILL. CONST. art. V, § 16 (1870).
22. 270 ILL. 304, 110 N.E. 130 (1915).
The Sixth Constitutional Convention realized these problems and set forth to reform the Illinois gubernatorial veto. The Illinois Constitution of 1970 provides that the Governor maintains his executive veto, but to remove some of the finality of the executive veto the constitution provides also that the General Assembly is to be a continuously meeting body, that the two-thirds majority needed to override a veto is reduced to a three-fifths majority, and that enacted bills are to be presented to the Governor within thirty days of enactment. To avoid the Fergus holding, the Illinois Constitution of 1970 provides for the retention of the line-item veto but also creates an item-reduction veto, which allows the Governor to reduce an item in an appropriations bill without vetoing the entire item.

In addition, to avoid forcing the Governor to veto a bill to which he is not totally opposed, or which contains minor errors, the Governor has been given an amendatory veto. This completes the Governor's arsenal of vetoes. The explanation from the committee proposals for the Committee on the Executive at the constitutional convention stated that the amendatory veto offers an alternative to the veto which will be especially helpful when the Governor finds reason to object to portions of a bill whose general merit he recognizes. For example, he is now with some degree of regularity compelled to veto some measures merely because of a technical flaw in their wording.

Under the proposed section, he would have the alternative of using a qualified veto which points out the specific changes necessary to make the measures acceptable. If the general assembly concurs in those changes by a majority vote, delays incident to starting completely anew would be avoided. . .

A two-fold general theme emerges for the utilization of the amendatory veto. First, the amendatory veto makes the path of a bill easier as it flows through the legislative process. The "either-or" predicament is thereby removed. Second, the amendatory veto affords the Governor the means to become a voice of public policy.

In suggesting an amendatory veto for the proposed new constitution, the Committee on the Executive was not working in a vacuum. Four other states' constitutions already provided for

22. ILL. CONST. art. IV, § 9(b).
24. Id. § 5(a).
25. Id. § 9(c).
26. Id. § 9(a). This provision was desired so that the General Assembly could not be lax in sending enacted bills to the Governor.
27. Id. § 9(d).
28. Id.
29. Id. § 9(e).
30. RECORD OF PROCEEDINGS, SIXTH ILL. CONSTITUTIONAL CONVENTION, vol. VI at 403 (1969-70) (Committee Proposals) [hereinafter cited as PROCEEDINGS].
an amendatory veto. The Committee on the Executive was aware of their experiences and reported on them to the convention. Moreover, there had been an unofficial use of an amendatory veto of sorts under the prior Illinois Constitutions of 1818, 1848, and 1870, but if the committee members knew of this experience in their own state, they left no record of their analysis and certainly did not share this knowledge with the full convention.

PRIOR USE OF THE AMENDATORY VETO

Illinois’ adoption of the amendatory veto follows the lead of Alabama, Virginia, Massachusetts, and New Jersey. In addition, since 1970, both Montana and South Dakota have adopted the amendatory veto. It was the use to which the amendatory veto was put by the first four states that led Delegate Frank A. Orlando at the constitutional convention to state before the full convention that the proposed amendatory veto “has worked in four states where it is presently in their constitution . . . .”31 The Committee on the Executive proposal noted that “[a]ll reports from those jurisdictions indicate that the procedure has been found useful by both the Governor and the General Assembly.”32 Finally, Delegate Orlando stated that “[t]he tool seems to be working well, and we recommend that it be incorporated within the proposed new constitution.”33

Although the amendatory veto provisions of those states other than Illinois which have adopted this provision differ, one theme common to all six states is that each amendatory veto provision envisions executive input into the legislative process. Only South Dakota limits the Governor’s power to correcting only “errors in style or form.”34 In short, only one state wants the chief executive to be the “chief proofreader.”

In judging possible legislative responses to a governor’s amendatory veto, it is important to examine the precise language of the particular constitutional provision. A governor’s “amendments” sent back to the legislature may not themselves be substantively amended by the legislature, but “changes” or “recommended amendments” might be subject to amendment by the legislature.35

31. 3 PROCEEDINGS, supra note 30, at 1338 (Verbatim Transcripts).
32. 6 PROCEEDINGS, supra note 30, at 403 (Committee Proposals).
33. 3 PROCEEDINGS, supra note 30, at 1338 (Verbatim Transcripts).
34. S.D. CONST. art. IV, § 4. Compare MASS. CONST. art. LIX; VA. CONST. art. V, § 6; ALA. CONST. art. V, § 125; N.J. CONST. art. V, § 1, para. 14(a) (3); MONT. CONST. art. VI, § 10.
35. See ALA. CONST. art. V, § 125, and text accompanying notes 36-58 infra.
Illinois Amendatory Veto

Other States

In 1901, Alabama became the first state to adopt a constitution specifically authorizing an amendatory veto. This amendatory veto complements the general veto and the line-item veto possessed by the chief executive in Alabama. The Alabama Constitution provides that bills which are amendatorily vetoed and subsequently amended by the legislature are to be presented to the Governor. If he approves of the bill, he signs it; otherwise, he returns the bill to the originating house with his objections:

If the governor's message proposes amendment which would remove his objections, the house to which it is sent may so amend the bill and send it with the governor's message to the other house, which may adopt, but cannot amend, said amendment...

The Governor's message is an automatic "do adopt as amended" motion in that absolutely no action is required on the floor of that particular house by any member of the legislative body other than approval by a majority of each house. In other words, no legislator need rise and move adoption of the Governor's "amendments." The Governor of Alabama has, therefore, acquired one of the most valuable of legislative prerogatives—the power to propose a bill. It is noteworthy, however, that the Alabama Constitution does provide that a legislator may make a motion to override the veto. This override requires only a simple majority vote in both houses.

This amendatory veto has been used recently and extensively in Alabama. In explaining the proposed Illinois amendatory veto to the Sixth Illinois Constitutional Convention, Delegate Orlando stated:

In Alabama, during the course of approximately some forty or fifty years, the record indicated that out of around 235 such bills which were sent back by the Governor to the legislature

37. Id. § 125.
38. Id.
39. "Do adopt as amended" is a concept developed by Gerald Gherardini of the Illinois Legislative Council. It means that the "amendments" are to be put to the originating and reviewing houses precisely as amended by the Governor with no change by the legislature.
42. The Director of the Alabama Legislative Reference Service says that in recent years the power has been used in almost every session and quite extensively. In 1971, for example, Governor Wallace returned a comprehensive general ethics bill with substantive amendments to eleven of twenty-eight sections. See H.B. 161, Ala. Legislature (1971) and Message of Governor Returning House Bill with Suggested Executive Amendments 161 (Sept. 20, 1971).
with suggested changes; all of them were accepted by the legislature with the exception of seven.\textsuperscript{43}

The Commonwealth of Virginia adopted the amendatory veto in 1902. The Virginia Constitution pertinently states:

If the governor approve the general purpose of any bill but disapprove any part or parts thereof, he may return it, with recommendations for its amendment, to the house in which it originated, whereupon the same proceedings shall be had in both houses upon the bill and his recommendations in relation to its amendment as is above provided in relation to a bill which he shall have returned without his approval, and with his objections thereto. . . .\textsuperscript{44}

In Virginia, unlike Alabama, a member of the legislature must move the “recommendations” for amendment on the floor of his particular house.\textsuperscript{45} This indicates that the legislature has the prerogative never to move the changes. Clearly, this is not an automatic “do adopt as amended” provision.\textsuperscript{46} Delegate Orlando compared Virginia favorably to Alabama as he spoke of the use of the amendatory veto.\textsuperscript{47}

Massachusetts, already in possession of a general veto, a line-item veto, and an item-reduction veto, in 1918 became the third state to adopt an amendatory veto as part of its constitution. The constitution provides in part that “[t]he Governor . . . shall have the right to return it to the branch of the general court in which it originated with a recommendation that any amendment or amendments specified by him be made therein.”\textsuperscript{48} The recommended amendments must be moved by a member of that particular general court, as in Virginia.\textsuperscript{49} Then the bill is referred to its original committee for consideration; thereafter, the committee recommends to the full legislature whether or not the Governor’s recommendations should be accepted. It is notable, though, that the Governor of Massachusetts will not return an amendatory veto message without first consulting the majority and minority leaders and whips of both houses, as well as the chief sponsors and opponents of the bill.\textsuperscript{50} This courtesy appears to have great support among legislative leaders because it removes the great surprise that a governor could precipitate with

\begin{footnotes}
\item[43] 3 PROCEEDINGS, supra note 30, at 1338.
\item[44] VA. CONST. art. V, § 6.
\item[45] Id.
\item[46] See Gherardini, supra note 40, at 3.
\item[47] 3 PROCEEDINGS, supra note 30, at 1338.
\item[48] MASS. CONST. art. LIX. The “general court” is the Massachusetts legislature.
\item[49] See Gherardini, supra note 40, at 2.
\item[50] This is according to Ann Lousin, Associate Professor at The John Marshall Law School, formerly convention staff member and Parliamentarian of the Illinois House of Representatives. See Chicago Daily News, Sept. 8, 1976, at 5, col. 2.
\end{footnotes}
an amendatory veto. This courtesy demonstrates the manner in which a governor can be forced to show respect for the legislative process.

New Jersey adopted an amendatory veto in 1948. The New Jersey Constitution provides:

The Governor, in returning with his objections a bill for reconsideration at any general or special session of the Legislature, may recommend that an amendment or amendments specified by him be made in the bill, and in such case the Legislature may amend and re-enact the bill. This is not an automatic "do adopt as amended" motion, but rather requires the desired amendments to be moved by a member of the house to which the bill has been returned. Amendments other than those proposed by the Governor are forbidden. Upon action by the legislature, the Governor may not again exercise his amendatory veto due to the failure of the legislature to accept all his recommended amendments.

In 1972, the Governor of South Dakota was given a limited amendatory veto that joined an arsenal which already included a general and line-item veto:

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 changes as to style or form may be approved by a majority vote of all the members of each house. This is not an automatic "do adopt as amended" provision but does require that a legislator move the recommendation on the appropriate floor. Defining what are "errors in style or form" appears to be a question that will have to be resolved by South Dakota's courts.

Montana became the seventh state to add an amendatory veto to a chief executive's veto arsenal that already included a general and line-item veto. The Montana Constitution provides:

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.

51. The consultation is to inform those key individuals of what lies ahead and may well lead to quiet and non-embarrassing compromises.
52. N.J. CONST. art. V, § 1, para. 14(b) (3).
53. See Gherardini, supra note 40, at 2.
54. Id.
56. See notes 39-40 supra.
57. MONT. CONST. art. VI, § 10(2).
The Governor's "recommendation for amendment" must be moved by a legislator and is not an automatic "do adopt as amended" provision. Notable is the fact that the Montana Constitution is explicit in prohibiting the Governor from returning a bill to the legislature for a second time.

**Illinois**

Before 1970, the amendatory veto was not a formal part of any Illinois constitution, even though it had existed in a de facto sense. Indeed, it had existed informally in every state charter since the first Illinois constitution was adopted in 1818. Therefore, Delegate Orlando was in error when he told the convention, "[t]his provision introduces something new to Illinois constitutional history." 59

The first state charter, the Illinois Constitution of 1818, provided for a "council of revision," composed of the Governor and most of the members of the Illinois Supreme Court. 60 The council's basic duty was to examine all enacted bills, and if a bill was found "improper," which came to mean "unconstitutional," the bill was returned to the General Assembly, which could repass the bill in original form by a majority vote. 61 The council of revision, however, did create an amendatory veto by, in effect, vetoing an "improper" bill and returning it along with amendments which often times out of legislative necessity were accepted by the General Assembly. In this manner the bills were returned to the council which certified the amended bills as laws. Since this system incorporated all three branches of the government in Illinois, there was no one to challenge the practice if, in fact, it was unconstitutional.

The 1848 constitution abandoned the "council of revision" and, furthermore, required only a bare majority vote of those elected to each house of the General Assembly to override the Governor's veto. 65 In 1869, the General Assembly initiated a quasi-amendatory veto when it adopted a resolution requesting the Governor to return four bills previously enacted and presented to the Governor for his consideration. The Governor complied with the resolution and one bill was sent again to the proper

58. See notes 39-40 supra.
59. 3 PROCEEDINGS, supra note 30, at 1338.
60. ILL. CONST. art. III, § 19 (1818).
61. Id.
63. ILL. CONST. art. III, § 19 (1818).
64. See Hanley, supra note 15, at 1, 8.
65. ILL. CONST. art. IV, § 21 (1848).
committee in the house. The bill was reported out of the committee with recommended amendments which were adopted by the House and later the Senate. Upon its second presentation the Governor certified the bill into law.\footnote{66}{See Debel, supra note 13, at 60-61; Hanley, supra note 15, at 8-9.}

In the post-Civil War years, the General Assembly passed a plethora of special or private legislation.\footnote{67}{See Public Laws of Illinois, 1869; Private Laws of Illinois, 1869, Vols. 1-4.} Governor J.M. Palmer utilized his general veto to check the abuses of this practice by the legislature and became the first Illinois Governor to utilize his veto for public policy reasons.\footnote{68}{See Hanley, supra note 15, at 2.} This abuse by the General Assembly and the General Assembly's ability to override the Governor's veto by a simple majority led the constitutional convention that drafted the 1870 constitution to take strong measures to prevent such abuse and to strengthen the power of the Governor.\footnote{69}{See text accompanying notes 14-20 supra.} A stronger, more absolute gubernatorial veto was created, but an amendatory veto of sorts did survive under the 1870 constitution.

In 1907, Governor Deneen vetoed a bill and included in his veto message implied suggestions for changes in the bill. The bill was rewritten in compliance with the implied suggestions and the Governor certified the bill.\footnote{70}{See Hanley, supra note 15, at 9.} This action did not escape judicial scrutiny. In 1920, the Illinois Supreme Court was called upon to construe an amendment to the enabling act of the Sanitary District of Chicago in People v. Brundage.\footnote{71}{296 Ill. 197, 129 N.E. 500 (1921).} The 1907 action by the Governor and General Assembly had been to amend the enabling act in order to provide for the filling of a vacancy in the office of the president of the sanitary board of trustees. The court issued a writ of mandamus to compel the Attorney General to file a quo warranto action challenging the incumbent president. The court examined the legislative history of the bill but did not question the path that Senate Bill 83 took to certification.\footnote{72}{Id.}

By 1969, however, the informal amendatory veto had fallen into total disuse and was not even known to most legislative observers. When most delegates considered the proposed amendatory veto, they considered public policy reasons and legislative realities, but did not consider the history of the de facto practice in Illinois.
THE CONVENTION ADOPTS THE AMENDATORY VETO

Compared with other constitutional problems facing the constitutional convention, inadequacies in the veto system were minor. For that reason few pre-convention observers encouraged the constitutional convention to insert an amendatory veto into the new constitution. It was, therefore, a surprise when the new legislative article proposed an amendatory veto.

In describing the new constitution to the people of Illinois prior to the ratification vote, the convention noted, "[t]he Governor is to have greater veto powers—to reduce the amounts specified in appropriation acts, and to propose changes in acts submitted for his consideration." The convention also advised the voters that the drafters sought "to improve procedures in the General Assembly" and "to make the executive branch more effective."

The amendatory veto proposed and adopted was as follows:

The Governor may return a bill together with specific recommendations for change to the house in which it originated. The bill shall be considered in the same manner as a vetoed bill but the specific recommendations may be accepted by a record vote of majority of the members elected to each house. Such bills shall be presented again to the Governor and if he certifies that such acceptance conforms to his specific recommendations, the bill shall become law. If he does not so certify, he shall return it as a vetoed bill to the house in which it originated.

Commenting as to this section, the convention informed the electorate that the Governor "will also have the 'amendatory veto' power which allows him to return a bill to the house in which it originated with his objections to it and suggestions for changes." This explanation neither identifies the problems with the amendatory veto which were discussed at the convention nor reveals the problems pertaining to this device which arose following the debates. The most significant of these problems involves gubernatorial misuse of the amendatory veto through lack of specific direction for its use.

The amendatory veto proposal was originally assigned to the Committee on the Executive which studied the powers and duties

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74. See generally Ill. Const. art. IV.
76. Id. at 2.
77. Ill. Const. art. IV, § 9(e).
of the officers of the executive branch, including the Governor.\textsuperscript{79} Later, the Committee on Style, Drafting, and Submission moved the amendatory veto into the legislative article\textsuperscript{80} where it was governed by still another committee; but all debate on the amendatory veto took place either before the Committee on the Executive or the Committee on Revenue and Finance or before the Committee of the Whole, the convention itself.\textsuperscript{81}

The debate centered around two basic issues: the scope of the Governor's use of the amendatory veto and the possible legislative responses to an amendatory veto message from the Governor. The debates, which were something less than exhaustive,\textsuperscript{82} have proved to be inadequate to explain the current problems with the amendatory veto. Indeed, the debates have created dichotomies within the areas they purported to cover. The first of the areas examined is the convention's discussion of the scope of the amendatory veto.

\textit{Scope of the Power}

To what extent may the Governor attempt to amend a bill through use of the amendatory veto? A spectrum of possibilities exists, ranging from the mere correction of technical or typographical errors to the complete substantive rewriting of a bill. Included in this spectrum are the possibilities of adding or deleting sections of a bill and of amending a bill to make it conform to other previously enacted legislation. Delegate Orlando, in presenting the amendatory veto proposal, stated that "basically its purpose is to enable the governor to have an alternative to vetoing a bill where there might be some technical flaw involved in it, which by the bill's modification might become acceptable to the governor."\textsuperscript{83} This language seems to limit the power to only technical changes. However, Delegate Dawn Clark Netsch later entered into a significant exchange with Delegate Ronald C. Smith and Delegate Orlando.

MR. R. SMITH: We had testimony to the effect that many of the bills that are returned for corrections or for simple deletions—simply to clean up the language. If the legislature can, instead of sending something back into committee, take care of that kind of a problem in one day, we felt that that would be a substantially progressive move.

\textsuperscript{79} There were nine substantive committees at the constitutional convention.
\textsuperscript{80} 6 \textit{PROCEEDINGS}, supra note 30, at 435.
\textsuperscript{81} See generally \textit{PROCEEDINGS}, supra note 30.
\textsuperscript{82} This is probably due to the fact that few persons were actually aware of what the amendatory veto was or what it could be. Furthermore, proponents conceivably wanted to keep the debate short and vague in order to get the proposal passed.
\textsuperscript{83} 3 \textit{PROCEEDINGS}, supra note 30, at 1338.
MRS. NETSCH: Then was it the committee's thought that the conditional veto would be available only to correct technical errors?

MR. ORLANDO: No, ma'am.84

This brief excerpt indicates that the Committee on the Executive clearly felt that the amendatory veto was to be useful in correcting minor technical flaws in legislation. But when given the chance to indicate the committee's intent to limit the scope of the Governor's power to technical changes, Delegate Orlando failed to take that crucial step. He thus enabled future courts to decide that the amendatory veto may be used to effect substantive changes in bills.85 The scope of the Governor's power to recommend substantive changes through the amendatory veto never again arose in the formal proceedings of the convention.

Curiously enough, the scope of the amendatory veto had previously been discussed in debates on the proposed finance article, which contained a proposal for an item-reduction veto.86 Delegate William A. Sommerschield, a member of the Committee on the Legislature, opposed including an item-reduction veto in the proposed constitution. He argued that the amendatory veto power was broad enough to allow the Governor to recommend the reduction of a line item as a condition to his passing the bill, and was therefore the functional equivalent of the item-reduction veto.87 Delegate Sommerschield argued:

I think we do have to allow the governor the ability to be able to indicate to the General Assembly that he thinks a particular line item is appropriating too much or not enough money. And I think the way for him to do that is to give him the conditional veto, not the reduction veto. . . . And I think if we look at the process that we are creating, both the conditional veto and the reduction veto allow the governor to reduce a line-item appropriation. . . . . And for this reason, I would ask you all to vote in favor of reducing the—or limiting—the reduction veto, in anticipation of passing the conditional veto, which I contend does the same thing but with certain checks on the ability of the governor.88

84. Id. at 1356.
85. The future court consideration came in People ex rel. Klinger v. Howlett, 50 Ill. 2d 242, 278 N.E.2d 84 (1972). See text accompanying notes 144-48 infra. Delegate Dwight Friedrich, a member of the Committee on the Executive at the constitutional convention, maintains that Delegate Orlando’s response was an “incorrect answer.” See ILL. Issus, Sept. 1977, at 10.
86. Since the Illinois Supreme Court in Fergus v. Russel, 270 Ill. 304, 110 N.E. 130 (1915), had held that the Governor must either approve or disapprove an item as a whole in an appropriation bill when using the line-item veto, the convention considered a specific item-reduction veto as a desired innovation. This item-reduction veto allows the Governor to veto a part of an item and therefore reduce it.
87. 2 PROCEEDINGS, supra note 30, at 907.
88. Id. at 909-10.
Delegate Sommerschield's motion to delete the reduction veto failed, but no one refuted his contentions concerning the scope of the amendatory, or conditional, veto. Neither did anyone ask about or explain the "certain checks" placed on the Governor's amendatory veto power.

Following the second reading of the proposed item-reduction veto, there was additional debate on the amendatory veto. Delegate Elward stated: "[W]ith the present power of item veto, plus the language I proposed to leave unchanged in section 9(e) where the governor may return a bill with recommendations for change . . . I think that we have reached all of the situations that ought reasonably to be reached." Delegate Elward proposed an amendment to delete the item-reduction veto at its second reading, and again Delegate Sommerschield argued in favor of the motion, declaring that "with the conditional veto you can use that as a reduction veto any way and say that he will reduce an item conditional on the legislature's action. I think that, in essence, is a reduction veto . . . ."

Again the motion to delete the item-reduction veto failed, and again no one challenged the characterization of the amendatory veto as another form of the item-reduction veto. Thus, these debates concerning the item-reduction veto manifest an intention on the part of the delegates to achieve an amendatory veto which included the power to recommend changes in substantive appropriations. It is readily apparent that the power inherent in the amendatory veto provision of the 1970 Illinois Constitution is not exclusively reserved to effectuating technical changes in a bill; the precise extent of that power, however, remains unclear.

Legislative Response to the Amendatory Veto

The constitution is totally silent on the powers of the legislature to respond to the Governor's "specific recommendations for change," except for the cryptic comment that it should treat the bill "as a vetoed bill." Certainly the legislature could accept the changes by a majority vote of those elected to both houses, or override the recommended changes, thus affirming its approval of the original bill, or refuse the changes and draft another bill. However, the question arises whether the legislature, once the bill is returned with recommended changes

89. Id., vol. 5 at 4082.
90. Id. at 4083.
91. See ILL. CONST. art. IV, § 9(e).
92. Id.
93. Id. § 9(c).
94. 3 PROCEEDINGS, supra note 30, at 1355-57.
from the Governor, may make its own changes in the Governor's changes? The six other states that utilize the amendatory veto are not consistent in their answer to this question. Illinois, as can be seen from the debates at the constitutional convention, chose not to pattern its veto after any other state's model. However, the drafters did consider the question.

The chief concern of the drafters was to avoid what Delegate Orlando described as the "ping-pong effect" of a bill passed through the legislature. The drafters were concerned that a bill could be passed by both houses, amended by the Governor, returned to the legislature, amended by that body, and sent back to the Governor, whence the process could repeat itself. It was the intent of the Committee on the Executive to end this shuttle or "ping-pong effect" after the Governor's initial recommendation for change. In solving this problem, the drafters, in effect, created something analogous to a tennis match in which each player is allowed two serves. The General Assembly has first serve when it passes a bill; the Governor has his first serve when he uses his amendatory veto. The General Assembly has its second serve when it sends the vetoed bill back with none or only some of the amendments adopted. The Governor has the final serve when he refuses to certify the bill and then sends it back to the General Assembly as a vetoed bill.

Delegate Sommerschield indicated that the proposed wording of the original amendatory veto provision, "specific suggestions," left the issue of legislative response to the amendatory veto unclear. He suggested that the Governor, as is done in Alabama, make recommended "amendments." Use of that word would clearly indicate that the legislature was without authority to amend the Governor's changes. The Committee on Style, Drafting, and Submission amended the wording to say that the Governor may make "specific recommendations for change," but refused to take the definitive step suggested by Delegate Sommerschield. Provided with the opportunity to make crystal clear that the legislature could not effect changes following those of the Governor, the convention balked and thus left a conflict between the ambiguous constitutional language

95. See text accompanying notes 37-54 supra.
96. 3 PROCEEDINGS, supra note 30, at 1355-57.
97. Id.
98. Id.
99. Id.
100. Id.
101. See ALA. CONST. art. V, § 125.
102. Id.
103. 5 PROCEEDINGS, supra note 30, 1552-55.
and the definite intent of the debates. The constitutional convention said one thing but did another.

The convention discussed only two aspects of the amendatory veto: the scope of the Governor's recommended changes, and the limitation on the legislature's response. As to the scope of the Governor's use of the power, the convention made it clear that the amendatory veto could be used to correct technical errors. The convention, however, refused to limit that power to only technical errors, thus leaving the scope of the power to the Governor's discretion. But, as to legislative response to amendatory vetos, the convention adopted the position that the legislature could make no changes. However, the language of the section conceivably indicates that legislative amendments are possible. Thus, important questions of constitutional interpretation have been left to the judiciary.

**EFFECT OF THE AMENDATORY VETO ON THE LEGISLATIVE PROCESS**

**The Legislative Process**

On July 1, 1971, the 1970 constitution gave then Governor Ogilvie an opportunity to utilize the amendatory veto. Typically a bill goes through the amendatory veto process without problem. The presiding officers of each house sign each bill that passes both houses to certify that all procedural requirements as set forth in the constitution and procedural rules have been followed.\(^{104}\) Within thirty calendar days after passage, the bill as enrolled is presented to the Governor. This process of presentment is judicially enforceable.\(^ {105}\) The Governor then considers the bill, and if he generally approves of it, yet wishes to recommend changes, he may utilize his amendatory veto power.\(^{106}\) Within sixty calendar days of presentation, the Governor must return the bill with an amendatory veto message to the house in which the bill originated.\(^{107}\) The originating house immediately enters the Governor's objections, as stated in his amendatory veto message, in its daily journal of transactions.\(^{108}\)

If a member of the originating house desires the Governor's

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104. Ill. Const. art. IV, § 8(d). This is known as "certifying" a bill.

105. Id. § 9(a). Under prior Illinois constitutions, it was not mandatory that bills be presented to the Governor. This led to the abuse of holding bills for presentment long after passage. See Hanley, supra note 15, at 6.

106. Ill. Const. art. IV, § 9(e).

107. Id. § 9(b). If there is no amendatory veto message, there is no valid amendatory veto. If the General Assembly is in recess or adjournment during the sixty day period, the Governor returns the bill to the Secretary of State, who returns the bill promptly to the originating house when the General Assembly reconvenes.

108. Id. § 9(c).
recommended changes to be approved, that member must make a formal motion on the floor of that house to suggest the recommended changes.\textsuperscript{109} This indicates that the Governor's recommendations are not self-executing, as in Alabama.\textsuperscript{110} If another member of that house feels that the Governor's proposed change is not "germane" to the bill as passed by both houses, he states his objections to the presiding officer.\textsuperscript{111} After all such appeals have been made, the presiding officer makes his final ruling on whether or not the Governor's proposed amendment is germane.\textsuperscript{112} If the amendment is ruled germane and otherwise in order, the house proceeds to take a roll call vote on the proposed amendment.\textsuperscript{113} If the bill passes as amended through the originating house, it is sent to the other house where a member of that house again must make a formal motion on the floor to suggest the recommended changes.\textsuperscript{114} If that house also approves of the bill as amended, it is presented for the second time to the Governor.\textsuperscript{115} The Governor then reviews the amended bill to see if it now conforms to his suggested recommendations.\textsuperscript{116} If the Governor approves of the amended bill, he signs and certifies that bill.\textsuperscript{117} However, if he disapproves of the amended bill, he must return it as a vetoed bill to the house in which it originated.\textsuperscript{118} This veto will stand until a member of each house moves that the veto be overridden, according to the normal procedure.\textsuperscript{119}

This is the path of the typical bill through the amendatory veto process. However, there are problems which have arisen

\begin{itemize}
\item[109.] Id. § 9(e). Consider the psychological effect on the General Assembly if the Governor's bills could be moved on the floor of the legislature without any motion from a legislator. Of course the other option open to the General Assembly is to fail to move the changes and start anew.
\item[110.] See Ala. Const. art. V, § 125.
\item[111.] House Rule 78. A proposal to amend or change a bill is always made by a legislator and is therefore subject to the rules of that house, even if the amendment springs from the amendatory veto message of the Governor.
\item[112.] If ruled germane, the motion to amend is put to a vote of that house. If ruled not germane, the motion to amend is declared out of order, and the motion cannot be considered. The consequence of this is that the bill will die in 15 days. Although "germane" was defined in Giebelhausen v. Daley, 407 Ill. 25, 95 N.E.2d 84 (1950), as "akin" or "closely allied," this standard has not been utilized by the court in testing the Governor's recommendations. See People ex rel. Klinger v. Howlett, 50 Ill. 2d 242, 278 N.E.2d 84 (1972).
\item[113.] See Ill. Const. art. IV, § 9(e).
\item[114.] Id. The action of the reviewing house must be consistent with that of the originating house.
\item[115.] Id.
\item[116.] Id.
\item[117.] Id.
\item[118.] Id.
\item[119.] Id. § 9(c).
\end{itemize}
within this process that are covered in neither the history of the convention nor the text of the constitution.

Legislative Response

The legislative response to the Governor's amendatory veto message was one of the two questions which the convention considered but did not answer. Following Governor Ogilvie's first amendatory veto messages to the General Assembly in 1971, Senator W. Russell Arrington requested the Attorney General's opinion on whether the legislature could itself make alterations in the Governor's specific recommendations for change. The Attorney General applied eight tests of constitutional construction to article IV, section 9(e) and reasoned by seven of those tests that there should be some flexibility in legislative response. However, the eighth canon of construction, intent of the drafters, apparently indicated that the legislature had no power to make changes. Even though contrary to the intent of the drafters, the Attorney General doubted that anyone would object to a mere revision in a typographical error or a nonsubstantive change made to conform the bill to proper legislative procedure.

Although Illinois has not yet tested this ruling, an Alabama case, Brandon v. Askew, has held that the legislature's amendment following the Governor's amendatory veto must conform precisely to the Governor's amendment. But a comparison of the Alabama amendatory veto to the Illinois amendatory veto indicates that the Alabama chief executive must make an "amendment," whereas in Illinois the Governor makes "specific recommendations for change." Since this problem has not been decided by the Illinois courts, it leaves open the potential for an attack on the constitutionality of a law certified by the Governor to be in general conformity with the Governor's specific amendatory veto message.

120. See text accompanying notes 73-85 supra.
121. ILL. OP. ATT'Y GEN. S-357 (Oct. 11, 1971). For a statement of the weight which should be given to Attorney General opinions, see ILL. OP. ATT'Y. GEN. at X (1971), which provides:

8. All opinions of the Attorney General are advisory only and are not binding on the State of Illinois or the courts of this state.
9. For a particularly difficult and important problem of law, officials should resort to a declaratory judgment action wherever possible.

122. ILL. OP. ATT'Y. GEN. S-357 (Oct. 11, 1971).
123. 172 Ala. 160, 54 So. 605 (1911).
124. See ALA. CONST. art. V, § 125.
125. ILL. CONST. art. IV, § 9(e).
**Effective Date of Laws**

Another problem in the legislative process occasioned by the amendatory veto is the determination of the effective date of passage of a bill following an amendatory veto. The date that a bill is passed and becomes law determines the date on which the bill becomes effective. The constitution encourages the conclusion of the principal legislative sessions on June 30 of each year by stating that all bills passed prior to July 1 become effective on a "uniform effective date" set by statute, formerly on October 1. A bill passed after June 30 of a calendar year becomes effective no sooner than the following July 1, unless the General Assembly provides for an earlier effective date of the bill by a three-fifths majority vote in each house.

Since the Governor is allowed sixty days to consider bills, most consideration of bills subjected to the amendatory veto occurs during the autumn legislative session. Arguably, a bill subjected to the amendatory veto process could be considered "passed" on either of two dates: (1) the date on which the bill was passed by both houses and presented to the Governor, or (2) the date that the Governor's recommended changes are accepted by both houses and presented to the Governor for certification.

The issue of which is the proper definition of "passage" was raised in *People ex rel. Klinger v. Howlett*. The Illinois Supreme Court held that the date of passage of an amendatorily vetoed bill is the date on which the legislature votes to approve the Governor's specific recommendations. The court stated:

> Any other definition of the word "passed" which fixed an earlier time would require this court to rule that the bills were passed before the legislature ever considered them in their final form, indeed before they were written. Nothing in the Constitution of 1970 suggested that the word "passed" was used in such an artificial and abnormal sense.

In response to *Klinger*, the General Assembly enacted Public

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126. *Id.* § 10 provides:
The General Assembly shall provide by law for a uniform effective date for laws passed prior to July 1 of a calendar year. The General Assembly may provide for a different effective date in any law passed prior to July 1. A bill passed after June 30 shall not become effective prior to July 1 of the next calendar year unless the General Assembly by the vote of three-fifths of the members elected to each house provides for an earlier effective date.


127. ILL. CONST. art. IV, § 10.

128. *Id.* § 9(b).


130. 50 ILL. 2d 242, 276 N.E.2d 84 (1972).

131. *Id.* at 248, 276 N.E.2d at 87.
Illinois Amendatory Veto

Act 78-85 which added section 3 to “An Act in relation to the effective date of laws.” The Act provides that “[f]or purposes of determining the effective dates of laws, a bill is ‘passed’ at the time of its final legislative action prior to presentation to the Governor pursuant to paragraph (a) of Article IV of the Constitution.”

This act has not been followed. The rule adopted by the Klinger court was subsequently followed in People v. Zayas. In Zayas, the Illinois Appellate Court made no reference to Public Act 78-85. Later, however, the Attorney General was requested by then Superintendent of Public Instruction Michael Bakalis to express an opinion of effective date for the date of passage problem; the Attorney General in another opinion limited Klinger to the situations in which the Governor’s recommended changes are substantive in nature and not merely technical corrections. The instances in which the Governor’s recommendations have been substantive in nature serve to illustrate an inherent problem with the amendatory veto power: the confrontation between the executive and legislature.

GUBERNATORIAL USE OF THE AMENDATORY VETO

How and Why the Governors Have Used It

From 1971 through the legislative session of 1975, Governors Ogilvie and Walker combined to utilize the amendatory veto 200 times. The General Assembly accepted the recommended changes in 153 bills and overrode only six bills that were the subjects of amendatory vetoes. In forty-one cases, bills have died in the legislature for want of a simple majority to pass the bills with the recommended changes.

An argument in favor of limiting the amendatory veto is that it grants the Governor too much legislative power. A governor with a broad amendatory veto can make policy not only from the governor’s mansion but inside the legislature as well. Those who argue that the amendatory veto is clouding the separation

of powers principle point to the fact that between Governors Ogilvie and Walker, 130 bills were amendatorily vetoed on general policy grounds. Of the forty-one bills that died in the legislature, thirty-seven had been amendatorily vetoed for general policy reasons. It is this veto for general policy reasons that has led to confrontations between the executive and legislature.

Of the remaining bills subjected to the amendatory veto, eight conflicted with or were unconstitutional under the United States or Illinois Constitution; nine conflicted with either a federal or state law; and seventeen others contained substantive drafting errors. Only thirty-six of the bills were amendatorily vetoed due to minor drafting problems, such as typographical errors, although this was the major use of the amendatory veto envisioned by the constitutional convention.

The problem of federal statutes or court decisions which affect prior passed Illinois legislation, intervening between the time an Illinois bill is passed by the General Assembly and is signed by the Governor, has led to another reason to use the amendatory veto. The use of the amendatory veto in People ex rel. Klinger v. Howlett arose following a United States Supreme Court decision concerning parochial which affected three previously passed Illinois bills. President Nixon's Wage-Price Stabilization Executive Order of August 15, 1971, directly affected four bills awaiting the Governor's signature, all of which involved a form of pay increase for state employees. A bill proposing an election was amendatorily vetoed following the adoption of the 18 year old voting amendment to the United

136. See Day, supra note 135; Gherardini 1, supra note 135; Gherardini 2, supra note 135; Gherardini 3, supra note 135; Hanley, supra note 15. General policy reasons are basically reflections of the Governor’s ideas of state government.
137. See Day, supra note 135; Gherardini 1, supra note 135; Gherardini 2, supra note 135; Gherardini 3, supra note 135; Hanley, supra note 15.
138. See Day, supra note 135; Gherardini 1, supra note 135; Gherardini 2, supra note 135; Gherardini 3, supra note 135; Hanley, supra note 15. Substantive drafting errors are drafting errors which would have impaired the legal effect of the enactment.
139. See Day, supra note 135; Gherardini 1, supra note 135; Gherardini 2, supra note 135; Gherardini 3, supra note 135; Hanley, supra note 15.
140. 50 Ill. 2d 242, 278 N.E.2d 84 (1972).
142. Pub. Act No. 77-1680 (Nov. 17, 1971), 2 LAWS OF ILL. 3188; Pub. Act No. 77-1681 (Nov. 17, 1971), 2 LAWS OF ILL. 3189; Pub. Act No. 77-1685 (Nov. 17, 1971), 2 LAWS OF ILL. 3196; and S.B. 1098 (not accepted by the House). These bills provided respectively for pay raises for administrative secretaries in the Circuit Court, minimum compensation for downstate teachers, maximum compensation for court reporters, and increased annual salaries for members of the judiciary.
Illinois Amendatory Veto

States Constitution to provide for the 18 year old vote. These five reasons combine to explain all the amendatory veto messages through 1975.

**Scope of the Governor's Authority**

In *People ex rel. Klinger v. Howlett*, the Illinois Supreme Court considered the scope of the Governor's authority to recommend changes to a bill. The court had to decide whether the Governor was limited to making merely technical changes, or whether he could recommend substantive changes in bills. The court denied a petition for an original writ of mandamus compelling the state auditor to make payments under the three parochial aid bills which Governor Ogilvie had returned with suggestions for change. The court disposed of the case by denying the writ on the ground that the bills had not yet become effective law. In addition, the court noted that Governor Ogilvie's use of the amendatory veto on these three bills had been quite extensive. In fact, the Governor had struck everything after the enacting clause in each bill and substituted new bills, at least in form. The court questioned the propriety of this use, briefly examined the constitutional convention debates concerning the scope of the use of the amendatory veto, and concluded:

Upon the basis of the imprecise text of the constitutional provision and the materials before us in this case, we cannot now attempt to delineate the exact kinds of changes that fall within the power of the Governor to make specific recommendations for change. It can be said with certainty, however, that the substitution of complete new bills, as attempted in the present case, is not authorized by the constitution.

This conclusion clearly was based on the form of the amendments and not on the substance of those rewritten bills. Governor Ogilvie responded to the decision by noting that he had actually changed very little in the bills. Indeed, in one bill only three words were added and ninety-seven deleted. He noted that most of the language in the bills as amended was repeated verbatim from the bills passed by the General Assembly. Thus, the effect of *Klinger* is to cloud further the extent to which the Governor may effect substantive changes in legislation by use of the amendatory veto.

143. U.S. Const. amend. XXVI.  
144. 50 Ill. 2d 242, 278 N.E.2d 84 (1972).  
145. Id.  
146. See text accompanying notes 126-34 supra.  
147. 50 Ill. 2d at 249, 278 N.E.2d at 88.  
148. Id.  
149. Illinois State Register, Feb. 18, 1972.
Alternative Use of the Amendatory Veto—Politics by Confrontation

The use of the amendatory veto to make general policy changes undoubtedly provoked confrontation between the General Assembly and the Governor during the administration of Governor Walker. Governor Walker added a new dimension to the use of the amendatory veto, as well as an element of confrontation between the executive and the legislature, when he used the amendatory veto in a startling manner during the fall of 1976. In an attempt to tie approval of state aid to public schools to passage of the Governor’s proposal for speeding the collection of state sales and corporate income taxes (which had previously failed in the General Assembly), the Governor returned House Bill 3518, entitled “An Act to amend Sections 18-8, 18-12 and 24-12 of ‘The School Code’ approved March 18, 1961, as amended” with specific recommendations that certain sections be changed or deleted unless the General Assembly approved of his tax collection speed-up process. In other words, one bill was “held hostage” through the use of amendatory veto on the condition that an alternative bill be passed or certain sections of the present bill be changed or deleted.

The General Assembly faced a dilemma. As a political matter, no state Legislator could vote against Governor Walker’s “recommendations,” because to do so would be to vote against the school aid bill. A three-fifths majority vote to override the Governor’s “recommendations for change” and to repass the original bill was politically impossible to gain. To pass the school aid bill in order to give state aid to the public schools required the acceptance of the tax speed-up program. The bill as amended did

150. See text accompanying notes 138-39 supra.
152. Id. There is also a “game theory” that can be played with the amendatory veto. To accept the Governor’s recommended changes a simple majority of eighty-nine votes is needed in the House and thirty in the Senate. See ILL. CONST. art. IV, § 9(c), (e). In order to pass a bill only a simple majority is required. See id. § 8(c). But to override an amendatory veto requires the concurrence of three-fifths of the members of each house, or 107 votes in the House and 38 in the Senate.

In 1973, for example, H.B. 763 sought to lower the standards on allowable pollution from high sulfur fuels. A statute already in effect had a higher environmental standard. Upon passage through both houses the bill was sent to Governor Walker, who amended the bill to allow less pollution than the original statute allowed, but more than the passed bill. A battle emerged between the environmentalists and the coal industry. The coal industry sought to override the amendatory veto and to repass the original bill in order to obtain the lower standard, but it was impossible to gain the required three-fifths majority. If the coal industry could not override the amendments, it wanted the existing statute as a second choice. The environmentalists wanted to accept the Governor’s changes but could not get the simple majority needed for acceptance. They did, however, have enough to block the coal industry’s
pass, but as Representative Joseph R. Lundy succinctly stated, "the flaw in Walker's procedure is that the Constitution doesn't give the governor authority to propose alternative specific changes."\(^{158}\)

**Constitutional Amendment**

Dismayed by the manner in which the first two Governors had utilized the amendatory veto, the Illinois General Assembly adopted a resolution to amend the constitution in order to limit the use of the amendatory veto to "the correction of technical errors or matters of form."\(^{154}\) The resolution passed the House on March 8, 1973, and the Senate on May 1, 1973, both by overwhelming votes.\(^{155}\)

Proponents of the amendment presented two basic arguments against the amendatory veto in its present form. First, the amendatory veto gave too much power to the Governor by enabling him to exercise great legislative power. Second, this form of creating legislation was not subject to traditional constitutional safeguards, such as the required reading of a bill by title on three different days in each house.\(^{156}\)

Opponents of the amendment argued five positions. First, the amendatory veto had been in use too short a time to be assessed fairly. Second, a restricted amendatory veto would lead to increased use of the general veto. Third, the proposed language of the resolution was ambiguous and would not accomplish what the proponents of the amendment desired. Fourth, the change was unnecessary. If the Governor went too far with the amendatory veto, the General Assembly could utilize its legislative prerogative not to accept his changes or to override the bill, or simply wait the five calendar days needed to introduce and pass a new bill.\(^{157}\) Finally, the amendatory veto was the tool the Governor needed to correct the harm done to a bill by a conference committee.\(^{158}\)

At the general election on November 5, 1974, the proposed amendment was defeated.\(^{159}\)

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155. Id.
156. Id. at 9.
157. Id.
158. See note 12 supra.
159. Johnston, supra note 129, at 259-60. It is widely believed that it was Governor Walker's strategic use of the amendatory veto during the summer of 1974 which led nearly every major Cook County newspaper to encourage its readers to turn down the requested amendment at the November 5 election. See Chicago Daily News, Sept. 28-29, 1974, at 8,
CONCLUSION

Thus the amendatory veto, proposed to enable accommodation between the Governor and the General Assembly, has turned into a vehicle for confrontation between those bodies. On the one hand, the Governor is trying to expand the scope of the amendatory veto. On the other hand, the General Assembly has attempted to define that power narrowly. Meanwhile, the final arbiter, the judiciary, awaits further challenges to the use of the amendatory veto.

State Senator Dawn Clark Netsch, a delegate to the Sixth Constitutional Convention and an opponent of the 1974 amendment, has stated: "I think it is terribly important to make one thing clear and that is it [the amendatory veto] is not intended and is not a vehicle for giving the Governor additional power. It was always thought to be a means of accommodation between the Governor and legislature." Be that as it may, the amendatory veto has significantly increased the power of the Governor. By using his amendatory veto to effect general policy changes in a bill that need be approved by only a simple majority of each house of the General Assembly, the Governor indeed becomes a very viable and active legislator.

Perhaps the only limitation on the use of the amendatory veto was the comment in Klinger that the Governor may not completely rewrite a bill. Apparently, however, the Governor may make major substantive changes in a bill. The Governor, as Governor Walker demonstrated, may also present alternative selections for changes. He may utilize his amendatory veto to make specific recommendations for changes in a bill or state his willingness to accept the presented bill if a different bill is passed by the General Assembly.

Clearly, the Governor has great powers to recommend changes in a bill, and the General Assembly has limited powers to alter those changes. Although the General Assembly has the prerogative of rejecting or accepting or overriding changes, or even introducing a new bill, the gubernatorial power remains a potentially tremendous power. For this reason, gubernatorial discretion and forbearance from needless confrontation will be the keys to the successful use of the amendatory veto in Illinois.

John Nelson Walters