

## Veto Procedures

The governor has the power to veto bills under the Minnesota Constitution. The governor can veto an entire bill or specific appropriations in a bill. This information brief describes the procedures for vetoing bills and items of appropriations and for legislatively overriding vetoes and item vetoes.

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## Overview

The governor has two veto powers under the Minnesota Constitution:

- The power to veto an entire bill
- The power to veto an “item of appropriation” while approving the rest of the bill for bills with two or more items of appropriation

**Bill vetoes** are divided into two categories:

- **Return vetoes** where the governor returns the bill to the legislature with a statement of the governor’s objections
- **Pocket vetoes** where the governor does not sign a bill presented within the last three days of or after the end of the biennial or a special legislative session

**Item vetoes** are carried out by the governor signing the bill, appending a statement of the items vetoed to the bill, and sending a copy of the statement to the legislature if it has not finally adjourned.

This brief describes the constitutional procedures, including court decisions construing the constitutional language, for carrying out and overriding vetoes and item vetoes.

## Bill Vetoes

**Different bill veto procedures apply under the Minnesota Constitution, depending upon whether:**

- The governor can return the bill to the legislature within three days (excluding Sundays) after its presentment (“**Return Vetoes**”); or
- The bill passed the legislature during the last three days of the legislative session or the legislature finally adjourned before the three-day return period has run (“**Pocket Vetoes**”).

After a bill is passed by both houses of the legislature, it is enrolled and presented to the governor. The Revisor of Statutes, as the agent of the legislature, prepares the enrollment (essentially the final version of the bill), assigns the bill a chapter number, and presents it to the governor.<sup>1</sup>

Under the constitution, the governor’s options for dealing with the bill depend upon whether “the legislature by adjournment \* \* \* prevents its [the bill’s] return [to the legislature]” or whether the “bill passed during the last three days of a session[.]”<sup>2</sup> The Minnesota Supreme Court has

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<sup>1</sup> [Minn. Stat. § 3C.04](#), subd. 5. In the enrolled bill, the Revisor has authority to correct minor clerical errors, such as spelling, grammatical, and cross reference mistakes.

<sup>2</sup> [Minn. Const. art. IV § 23](#).

construed “adjournment” to mean “final adjournment.”<sup>3</sup> Thus, neither an adjournment for a few days nor the interim adjournment at the end of an odd-numbered year session to the even-numbered year session counts as preventing the bill’s return. Rather, it is limited to *sine die* or final adjournment—adjournment where the legislature does not specify a time to reconvene and, thus, will not meet again, unless the governor calls a special session.<sup>4</sup> As a result, if the legislature is in an interim adjournment or is adjourned for a few days, the governor’s only veto option is to execute a return veto.<sup>5</sup>

## Return Veto Procedures

**To veto a bill, the governor must return it with a statement of objections to the house of origin within three calendar days (excluding Sundays) after the bill is presented.**

After the Revisor presents a bill to the governor while the legislature is still in session, the governor has three options for dealing with the bill:

- (1) The governor can sign the bill into law. This is done by signing the bill, depositing it with the secretary of state and notifying the house of origin (i.e., the House of Representatives for a House File and the Senate for a Senate File).<sup>6</sup>
- (2) The governor can veto the bill by returning it to the house of origin with a statement of the governor’s objections. Neither the constitution nor the statutes specify precisely how this return is to be done. If the house is actually meeting in session when the return is made, the bill should be returned directly to the session of the house. If the house is not meeting at the time of the return, the Minnesota Supreme Court has suggested in *dicta* that the bill could be returned to the presiding officer, secretary or clerk, or any member of the house as an agent for the body.<sup>7</sup>
- (3) The governor can allow the bill to become law without his signature by neither signing the bill nor returning it with objections to the legislature. This occurs automatically at the end of three calendar days. In measuring the three-day period, the day the bill is presented and Sundays are not counted. All other days, including holidays and days

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<sup>3</sup> *State v. Hoppe*, 215 N.W.2d 797 (1974).

<sup>4</sup> The constitution prohibits the legislature from meeting after the first Monday following the third Saturday in May. [Minn. Const. art. IV § 12](#). Thus, the legislature must adjourn by that date both in odd- and even-numbered years. The adjournment in odd-numbered years generally is an interim adjournment, since the legislature typically adjourns to a specific time in the next (even-numbered) year.

<sup>5</sup> The *Hoppe* case held that the legislature prevents return of bill by the governor only with a final or *sine die* adjournment. *State v. Hoppe*, 215 N.W.2d 797, 803-05 (1974). In the court’s words: “[T]he adjournment in the odd-numbered year to a fixed date in the even-numbered year is not a final adjournment but merely a temporary interim adjournment during the biennial session.” *Ibid.* at 803.

<sup>6</sup> [Minn. Const. art. IV § 23](#); Minn. Stat. § 4.034.

<sup>7</sup> *State ex rel. Putnam v. Holm*, 215 N.W. 200, 203-04 (1927). The court also noted that governors had returned bills (apparently to legislators) at places other than the Capitol when the legislature was not meeting. It is not clear whether a timely return to the chamber, rather than to a member, officer, or employee, when the house was not in session would meet the constitutional return requirement.

when the legislature does not meet, do count. If the governor does not act within this three-day period, the bill becomes law as if the governor had signed it.<sup>8</sup>

**Bill Veto Override: The legislature may override the governor’s veto, if each house repasses the bill by a two-thirds vote.**

After return of the vetoed bill, the constitution provides for the governor’s objections to be printed in the journal of the house in which the bill originated.<sup>9</sup> In order to override the veto, each house must repass the bill by a two-thirds majority vote of the entire body. This vote must be taken as a roll call with the members’ votes printed in the legislative journals. If a bill is repassed over the governor’s veto, the bill is, then, deposited with the secretary of state.<sup>10</sup>

### **Pocket Veto Procedures**

A pocket veto prevents a bill, passed by the legislature, from becoming law because the governor fails to sign it within the required time specified by the constitution. The legislature cannot override a pocket veto, because it is no longer in session. Two different situations, one explicitly stated by the constitutional language and the other implied by the constitution, allow pocket veto of a bill:

- **The bill was passed during the last three days of the legislative session**—this is explicitly provided by the constitutional language; or
- **The bill was not passed during the last three days of the session, but the legislature finally adjourns and prevents the governor from returning the bill within the three-day limit**—this type of pocket veto is implied by the constitutional language and has been confirmed by *dicta* in a Supreme Court decision.

Slightly different procedures (i.e., different time requirements) apply to the two types of pocket vetoes.

For a bill passed during the last three days of the session (i.e., starting two days before the day of sine die adjournment), failure of the governor to sign the bill and deposit it with the secretary of state results in a pocket veto, not in the bill becoming law.<sup>11</sup> The governor also has a longer period of time—14 days after final adjournment—to decide whether to sign or veto the bill.

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<sup>8</sup> The constitution simply states “Any bill not returned by the governor within three days (Sundays excepted) after it is presented to him becomes law as if he had signed it \* \* \*.” [Minn. Const. art. IV § 23](#). The Minnesota Supreme Court has construed “three days (Sundays except)” to mean calendar days. Holidays and days when the legislature does not convene are counted in measuring the three-day period. *State ex rel. Putnam v. Holm*, 215 N.W. 200 (1927) (holiday counted in measuring three days).

<sup>9</sup> [Minn. Const. art. IV § 23](#).

<sup>10</sup> These procedural requirement (roll call, recording in journal, and so forth) are explicitly prescribed by the constitutional language. [Minn. Const. art. IV § 23](#).

<sup>11</sup> The constitution provides:

Any bill passed during the last three days of a session may be presented to the governor during the three days following the day of final adjournment and becomes law if the governor signs and deposits

Unless both acts—signing and depositing the bill in the office of the secretary of state—are done within the 14-day period after final adjournment, the bill is pocketed vetoed.<sup>12</sup> This 14-day period does not exclude Sundays or holidays. Because it may be impossible to deposit the bill with the secretary of state on a nonbusiness day, in practical effect, the 14-day period can be shorter if it ends on Saturday, Sunday, or holiday when the office is not open.<sup>13</sup>

A bill may not be passed during the last three days of a session, but a final adjournment of the legislature may prevent its return to the legislature within the three-day limit.<sup>14</sup> If the governor fails to sign such a bill or to execute a return veto, the constitutional language does not resolve what occurs in this situation – neither the explicit pocket language applies nor is the three-day time period satisfied (allowing the bill to become law without the governor’s signature) because of the final adjournment. A 1973 Opinion of the Attorney General opined that in such a circumstance the bill would be pocket vetoed.<sup>15</sup> The Supreme Court, in *dicta*, agreed with the attorney general stating such a bill would be pocket vetoed.<sup>16</sup> In that situation, a governor would be well advised to assume that bill cannot become law without his or her signature.

**A pocket veto or a veto after the legislature has finally adjourned likely cannot be overridden.**

The constitution provides no opportunity for pocket vetoes to be overridden by the legislature. It simply states:

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it in the office of the secretary of state within 14 days after the adjournment of the legislature. Any bill which is not signed and deposited within 14 days after adjournment does not become law. [Minn. Const. art. IV § 23](#).

<sup>12</sup> The 14-day period runs from final adjournment and is absolute. By contrast, the three-day period runs from the date of presentment—an act under the control of the legislature and its agent, the Revisor. The legislature can (and has) delayed presentment either to accommodate the governor’s schedule or for its own reasons. The constitution probably does not allow this for bills passed during the last three days of the session. It provides:

Any bill passed during the last three days of a session may be presented to the governor during the three days following the day of final adjournment and becomes law if the governor signs and deposits it in the office of the secretary of state within 14 days after the adjournment of the legislature. [Minn. Const. art. IV § 23](#).

Although the constitution uses “may” (generally a permissive term) the context suggests that it is intended to be mandatory—that is, the three days after final adjournment are the only days such a bill may be presented. In any case, presentment does not figure into the appropriate time limit and the legislature delaying presentment’s only effect would be to increase the prospects for a pocket veto by thwarting the governor’s ability to sign the bill.

<sup>13</sup> An accommodating secretary of state could agree to accept deposit on a day that the office is not typically open. The 14 days run from adjournment, not presentment. As a result, the governor will not have possession of the enrolled bill, but will have notice of its language from public legislative records of its passage.

<sup>14</sup> To illustrate how this could occur, assume a bill is passed on April 1 but is not presented until April 2, and further assume that the legislature meets on April 2, April 3, and adjourns *sine die* on April 4. The bill was not passed during the last three days of the session (i.e., April 2, 3, and 4), so the explicit constitutional language providing for a pocket veto does not apply. But the legislature’s *sine die* adjournment prevented the bill’s return with the three-day period, which ends on April 5, because the day of presentment does not count.

<sup>15</sup> Opinion of Atty. Gen. 280 (May 8, 1973).

<sup>16</sup> *State v. Hoppe*, 215 N.W.2d 797, 803-04 (1974).

Any bill passed during the last three days of the session which is not signed and deposited within 14 days after adjournment does not become law.<sup>17</sup>

Since the legislature has finally adjourned, there is no opportunity to override a pocket veto. Even if the governor were to call a special session, the vetoed bill would not be before the legislature and subject to an override vote. This is probably also true, if the governor vetoes the bill by returning it to the legislature after final adjournment.<sup>18</sup>

The appendix contains flow charts of the bill veto and approval process.<sup>19</sup>

## Item Vetoes

**The constitution authorizes the governor to veto an item of appropriation by appending to the signed bill a statement of the items vetoed and transmitting a copy to the legislature, if it is in session.**

The constitution is less specific about the procedures to be used in item vetoes of appropriations than vetoes of an entire bill. The constitution provides that the governor may veto appropriation items by “append[ing] to [the bill] a statement of the items he vetoes and the vetoed items shall not take effect.”<sup>20</sup> This statement is filed along with the bill with the secretary of state. If the legislature is in session, the constitution directs the governor to transmit a copy of the statement to the house of origin.

Although the constitution refers to “appending” a statement to the bill, both Governors Carlson and Perpich followed the practice of also marking up the bills to make their intent clear as to the items vetoed. This practice is not explicitly sanctioned by the constitution. However, a court probably would use the markings on the bill as a guide to determine the governor’s intent in the appended statement or veto message.<sup>21</sup>

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<sup>17</sup> [Minn. Const. art. IV § 23](#).

<sup>18</sup> This is less clear. The language of the constitution appears to say that a bill passed during the last three days of the session does not become law if it is not signed and deposited. However, if the governor chose to return the bill to the house of origin with a veto message, the language in the constitution permitting an override may apply if a special session of the same legislature were called. This question has never been decided by a Minnesota court. Other state constitutions specifically provide for this circumstance and some state constitutions permit overrides of pocket vetoes by the next legislature or other procedures. *See, e.g.*, Ga. Const. art. III, sec. V, para. XII (d) (override by next legislature); Mont. Const. art. VI § 10 (4) (a) (override by mail poll of legislators).

<sup>19</sup> These charts are from House Research, *Making Laws* (Feb. 2018).

<sup>20</sup> [Minn. Const. art. IV § 23](#).

<sup>21</sup> The effect of marking up a bill seems less clear, if the governor fails to append a statement as to the item vetoed altogether or if the statement conflicts with the marked up bill. Courts in other states generally have been somewhat lenient in allowing governors to deviate from the precise requirements specified in the constitution regarding the form of item veto messages. *See, e.g., Dickenson v. Page*, 179 S.W. 1004 (Ark. 1915).

**The current constitutional language contains no explicit time limit on carrying out an item veto, but the three-day time limit for bill vetoes probably applies.**

The constitution does not specify that item vetoes be made within a specific time limit. However, as described above, the constitution does provide that if the governor does not sign or veto a bill within three days after presentment and the bill was not passed during the last three days of session, the bill becomes law “as if he had signed it[.]”<sup>22</sup> One might reasonably conclude that this means the bill becomes law as passed and that the opportunity to veto an item of appropriation is gone. Thus, following this logic, item vetoes must be carried out within the three-day time limit. Furthermore, the constitution requires the statement of vetoed items to be appended “[a]t the time the bill is signed[.]”<sup>23</sup>

If the bill was passed during the last three days of the legislative session, it is clear that the governor must execute an item veto within 14 days after adjournment. The actual act of an item veto—i.e., the appending of the statement of vetoed items to the original bill—must be done by the time the bill is physically transmitted to the secretary of state.<sup>24</sup> Thus, this act must be done within 14 days of adjournment or the bill will be signed into law (without the item vetoes) or pocket vetoed.

**The original language (before the 1974 rewrite of the constitution) more clearly required the three-day requirement to be met. The 1974 amendment was intended to be stylistic only and to have no substantive effect.**

As originally written, the 1876 amendment that added the item veto power to the constitution also provided that:

All the provisions of this section [the provision establishing the general veto power], in relation to bills not approved by the governor, shall apply in cases in which he shall withhold his approval from any item or items contained in a bill appropriating money.<sup>25</sup>

This language confirms that the three-day rule for bill vetoes also applied to item vetoes. Thus, the governor could not wait four days after presentment to sign a bill and still veto appropriation items in the bill. The vetoed items would be law as if the governor had signed the bill at the end of the third day.

This added language was deleted in the 1974 restructuring of the constitution.<sup>26</sup> The 1974 amendments were intended to be only stylistic. The question submitting the amendments to

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<sup>22</sup> [Minn. Const. art. IV § 23.](#)

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> [Minn. Laws 1876, ch. 1 § 1.](#) <sup>26</sup>

[Minn. Laws 1974, ch. 409, § 1.](#)



voters said as much.<sup>27</sup> In two cases, the Supreme Court has concluded that the 1974 changes in the constitution's language should not be viewed as changing its meaning.<sup>28</sup> Thus, the three-day limit and other procedural requirements contained in the bill veto language, but not in the item veto language, likely apply to item vetoes.

**After filing of an item veto or passage of the three-day time period, the governor likely cannot amend or change an item veto.**

Although this is not absolutely clear from the constitutional language, the requirement of depositing signed bills with the secretary of state and the three-day time deadline appear designed to impart a finality to the governor's actions in signing, vetoing, or item vetoing bills or appropriations. Once these actions have been taken (or the three-day deadline has passed), it should be clear whether a bill or appropriation has become law. For example, after the governor has vetoed an item of appropriation and filed the bill with the secretary of state, the governor probably cannot change his mind and allow the vetoed appropriation to take effect by amending the veto message. This would especially seem to be the case if the three-day deadline has passed.

Nevertheless, both Governors Perpich and Carlson have amended item veto messages after they were filed with the secretary of state and the legislature.<sup>29</sup> In both instances these amendments were made after the three-day deadline had expired.

**The legislature may override an item veto if each house repasses the item by a two-thirds vote. Each vetoed item must be voted on separately.**

The constitution authorizes the legislature to override an item veto by a two-thirds majority vote. In general, the same procedures apply to item veto overrides as to bill veto overrides. The matter will be taken up first by the house of origin and then transmitted to the other house. The votes must be taken by roll call procedures and the members' votes printed in the legislative journals.

The constitution provides each vetoed item must be "separately reconsidered." Thus, each vetoed "item" must be voted upon separately. Several items cannot be combined in a single vote. One evil intended to be curtailed by the item veto power was "log rolling"—combining

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<sup>27</sup> [Minn. Laws 1974, ch. 409](#), § 2. The question provided: "Shall the Minnesota Constitution be amended in all its articles to improve its clarity by removing obsolete and inconsequential provisions, by improving its organization and by correcting grammar and style of language, *but without making any consequential changes in its legal effect?*" [Emphasis added.]

<sup>28</sup> *City of Golden Valley v. Wiebesick*, 899 N.W.2d 152, 159 (Minn. 2017); *Butler Taconite v. Roemer*, 282 N.W.2d 867, 868 n.1 (Minn. 1979).

<sup>29</sup> In the instance involving Governor Perpich, legislators objected to his suggestion in the veto statement that the money would be spent for other purposes. In response, he filed a statement with the House of Representatives (the house of origin) and secretary of state indicating the money would not be spent. *House J.* at 6237 (1983). In the instance involving Governor Carlson, apparently a mistake was made in identifying the correct reference in the bill to be vetoed and the revised veto statement corrected this reference. Compare the vetoes of appropriations in [chapter 292](#), article 1, § 2, in Letter from Governor Arne H. Carlson to Robert Vanasek and Jerome Hughes, dated June 4, 1991, page 6 with same the letter but titled "*Corrected Copy*" (although both letters are dated June 4, 1991, the corrected copy was delivered later). The corrected copy was printed in the *House Journal*, *House J.* 8790, 8795 (1991).



several provisions, each with only marginal legislative support, to garner enough votes for passage of the combination. Allowing combination of items for one override vote could permit log rolling on the override vote. Separate reconsideration requires each item to pass on its own merits.

Separate reconsideration also puts the burden on the house of origin to identify the separate items that were vetoed. It may not always be clear what constitutes a separate item of appropriation. For example, if the governor vetoes a lump sum appropriation that consists of three separate component appropriations, must (or may) the legislature override the veto of the entire appropriation in one vote? Must (or may) it vote separately on each component part of the appropriation?

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## AN ACT THAT PASSES DURING THE LAST THREE DAYS OF A SESSION

