INFORMATION BRIEF
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History of the Item Veto in Minnesota

This information brief provides a short history of the Minnesota item veto power—the constitutional power of governors to veto items of appropriations in bills containing multiple appropriations, while still approving the rest of the bill. The brief describes the 1876 amendment that established the item veto, the unsuccessful attempt to expand the item veto power in 1915, the use of the item veto by Minnesota governors, and court challenges to use of the item veto.

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Overview

In 1876, Minnesota voters amended the Constitution giving the governor item veto power, the authority to veto one or more items of appropriation in a bill with multiple appropriations while approving the rest of the bill. This followed the practice in a number of other states and apparently was intended to provide the governor with increased power over legislative spending decisions. (Pages 3 to 5)

In 1915, a second constitutional amendment was proposed by the legislature to further augment the governor's authority over appropriations and budgeting. This amendment would have allowed the governor to reduce an appropriation in a bill with multiple appropriations, as well as completely vetoing the appropriation. The amendment garnered a majority of those voting on the question, but not the necessary majority of those voting in the election. As a result, it was not added to the constitution. (Pages 5 to 7)

During the 19th and early 20th centuries, Minnesota governors rarely used the item veto power. The first recorded uses occurred in 1917 (one by Governor J. A. A. Burnquist) and in 1929 (nine items by Governor Theodore Christiansen). Routine use of the veto power did not become common until the 1990s. The table below lists the items vetoed for each of the governors who exercised the power. The escalation in use of the power starting with Governor Arne Carlson in 1991 is clear.

Minnesota Governors' Exercise of the Item Veto Power

Governor	Session(s)	Items vetoed	Amount
J. A. A. Burnquist	1917	1	$5,000
Theodore Christianson	1929	9	15,007,746
Karl Rolvaag	1965	2	301,400
Wendell Anderson	1971	1	32,285
Albert Quie	1980	15	5,434,000
Rudy Perpich	1983, 1987, 1989, 1990	13	(1,472,000)*
Arne Carlson	1991 – 1998	238	263,397,000
Jesse Ventura	1999 – 2002	175	533,603,453
Tim Pawlenty	2003 – 2010	202	1,126,627,644**
Mark Dayton	2013 – 2014	4	11,360,000

All dollar amounts exclude effects of vetoes of open appropriations (i.e., appropriations where the dollar appropriated is not specified), unless otherwise noted.
*Reflects vetoes of reductions in appropriations.
**Includes calculation of dollar amount of veto of appropriation of a portion of one-year of taconite production tax collections.

Most governors have used the power in relatively straightforward ways, that is, to negate discrete legislative authorizations of items of new state spending. However, both Governors Rudy

Perpich and Arne Carlson used the power in creative ways that led to conflicts with the legislature and outside interest groups. Governor Perpich used the power to veto appropriation reductions and attempted to veto limitations or conditions on appropriations to give the executive branch more flexibility in spending the money. The legislature protested these uses in two instances.

Governor Carlson similarly used the veto in a number of creative ways, including vetoes of provisions that did not explicitly authorize or limit state spending, attempting to rewrite statutory language, and vetoing amounts that appeared only in legislative working papers. Some of these uses resulted in litigation, including two Minnesota Supreme Court cases, and in opinions of the attorney general questioning the governor's use of the veto power. (Pages 7 to 15)

The legislature has only rarely attempted to exercise its power to override item vetoes. The only successful overrides in the state's history were of four item vetoes by Governor Jesse Ventura in 2000. (Pages 16 to 17)

Five lawsuits were filed challenging vetoes by Governor Carlson. In two of these cases, the courts invalidated the vetoes, while the other cases either upheld the vetoes or were dismissed on procedural or other grounds. Two of the cases were decided by the Minnesota Supreme Court and the third by the Ramsey County District Court. The two Supreme Court decisions established that the definition of an "item of appropriation" means the designation or dedication of a "separate and identifiable sum of money" in the state treasury for a specified purpose. The court also held that vetoes need not reduce state spending, but need only to negate the spending authorized by the vetoed item. In general, the court stated the governor's power was to be narrowly construed as an exception to the legislative power. However, it remains to be seen exactly how expansively or narrowly the court will construe the term "item of appropriation." (Pages 18 to 23)

The 1876 Item Veto Amendment

An 1876 amendment to the Minnesota Constitution authorized the governor to veto one or more "items of appropriation" in a bill containing several appropriations while approving the rest of the bill. This amendment remains the basis of the governor's item veto power.

The 1858 constitution gave the governor general veto power. The item veto power—the power to veto individual appropriation items—was added in 1876. The amendment was approved by an overwhelming margin, 47,302 to 4,426.[1]

The amendment provided:

[1] Minnesota Office of the Secretary of State, *The Minnesota Legislative Manual 2012-2013* (St. Paul: Minnesota Office of the Secretary of State, 2013), 80, available http://www.sos.state.mn.us/2013_MN_legislative_manual/chapters/chapter_2-charters_laws_and_founding_documents.pdf.

> If any bill presented to the governor contain[s] several items of appropriation of money, he may object to one or more of such items, while approving of the other portion of the bill. In such case, he shall append to the bill at the time of signing it, a statement of the items to which he objects, and the appropriation so objected to shall not take effect.[2]

Little of the history surrounding the 1876 amendment has survived. The historical context suggests that the amendment was intended to increase the power of Minnesota governors relative to the legislature, but provides little in the way of specifics to aid in resolving disputes over the extent of the governor's power.

Item veto powers, by most accounts, were first given to the President of the Confederate States of America. After the Civil War, states began granting item veto powers to their governors. By the late 19th century, the item veto had become a common feature of state constitutions.

The item veto was seen as a means of increasing governors' power over state spending to counterbalance the power of parochial and frequently corrupt state legislatures. In particular, supporters thought the item veto would curtail the enactment of "pork-barrel" legislation and the practice of "log-rolling."[3]

As their budgets and operations grew, states needed to increase control over their finances—controlling expenditures and coordinating them with revenues. Conventional wisdom held that state governments needed more business-like administration of their operations and that administration needed to be separated from politics.[4] Increasing the governor's power was the standard way to accomplish this. The item veto provided one element of this increase.

The amendment establishing Minnesota's item veto was recommended by John Pillsbury, governor from 1876 to 1881. Governor Pillsbury was a forceful governor who expanded the role

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[2] Laws 1876, ch. 1, § 1. The remainder of the amendment provided:

> If the legislature be in session, he shall transmit to the house in which the bill originated a copy of such statement, and items objected to shall be separately reconsidered. If, on reconsideration, one or more of such items be approved by two-thirds of the members elected to each house, the same shall be a part of the law, notwithstanding the objections of the governor. All the provisions of this section, 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.

The 1876 amendment remains the sole basis for the Minnesota item veto power. In 1974, the constitution was restructured and rewritten to reform its style and structure. See Laws 1974, ch. 409; Secretary of State, *Minnesota Legislative Manual*, 61. This amendment rewrote section 23 to yield its present form. See the amendment to Minn. Const. Art. IV, § 23 by Laws 1974, ch. 409, § 1. These changes were intended to have only stylistic effects. The 1974 legislation included a severability provision that stated:

> If a change included in the proposed amendment is found to be * * * other than inconsequential by litigation before or after the submission of the amendment to the people the change shall be without effect and severed from the other changes. The other changes shall be submitted or remain in effect as though the improper changes were not included. Id. § 2.

[3] House Committee on Rules, *Item Veto: State Experience and Its Application to the Federal Situation*, 99th Cong., 2d Sess., Dec. 1986, 9-13.

[4] Ibid., 12-13.

of the governor generally and attempted to improve the administration of state government by applying business organization principles to its operation. He is best remembered for resolving the state's default on its railroad bonds and establishing the Office of Public Examiner, an office that audited the finances of state and local governments.[5]

In conclusion, aside from augmenting the governor's power to control state spending and administration, it is difficult to infer much as to the specific intent in the 1876 grant of the item veto. The context lends a flavor of the intent, but little to aid specifically in resolving disputes over the extent of the governor's power.

No Minnesota governor exercised the power during the 19th century.

Governors in other states exercised the item veto power with some regularity. In a few states, governors exercised their item veto powers extensively. By 1915 about a dozen or so court cases had construed the extent of other governors' item veto power.[6] However, by 1915 no Minnesota governor had used the item veto, much less been challenged in court over its use.[7]

The 1915 Proposed Amendment

In 1915 the legislature submitted to the voters a second constitutional amendment expanding the governor's item veto power as part of an overall reform of state budgeting. This amendment would have given Minnesota governors the power to reduce items of appropriation. The amendment was not adopted.

The 1915 amendment would have given the governor the power to veto an item of appropriation "in whole or in part."[8] The history and exact purpose of the failed 1915 amendment is sketchy. One clear intent of the amendment was to give the governor power to reduce appropriations, not just veto them in whole.

Attorney General Lyndon A. Smith described the effect of the amendment:

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[5] See William W. Folwell, *A History of Minnesota,* volume 3, (St. Paul: Minnesota Historical Society, 1969), 119-23, for a description of the Pillsbury administration. According to Folwell, the item veto amendment was recommended by Governor Pillsbury. Id., 119. The desire for executive control over state expenditures would be consistent with Pillsbury's role in establishing the Public Examiner and improving government administration.

[6] See *Item Veto: State Experience*, 14-15, 19-22. Much of the litigation focused on the power of the governors to reduce appropriations and what parts of appropriations governors could veto.

[7] This statement is based on the records the author is aware of. See the caveat in the box on page 7.

[8] The full text of the item veto power, as proposed to be amended, would have read as follows:

> If any bill presented to the governor contains several items of appropriation of money, he may object to one or more of such items in whole or in part, while approving of the other portions of the bill. In such case, he shall append to the bill, at the time of signing it, a statement of the items and parts of items to which he objects, and the part of any appropriation so objected to shall not take effect. Laws 1915, ch. 383, § 1 [proposed new language underlined].

> Under the constitution as it now is, the governor may veto any item in an appropriation bill, but he cannot cut down the amount appropriated for any specific purpose. The amendment, if adopted, will give the governor power to reduce the amount of an appropriation for any given purpose, unless upon transmittal to the legislature of a statement of the part of an item of an appropriation bill to which he objects, the two houses, each by a two-thirds vote, approve the item as it was originally passed.[9]

In 1915 Minnesota revamped its budget and appropriation systems in response to recommendations made by the Minnesota Efficiency and Economy Commission, a blue ribbon commission established and appointed by Governor Adolph Eberhart. The commission recommended a system based upon a gubernatorial budget submitted to the legislature.[10] Under this system each department prepared estimates of its revenue and expenditure needs for the coming biennium and submitted these to the governor. The governor, in turn, revised these requests and submitted the proposed budget to the legislature. The structure and organization of the budget (its breakdown into "items" and so forth), thus, was to be determined by the executive branch. This new budget system significantly increased the governor's responsibility for and power over state spending.

Critics of the proposed executive budget system, however, felt that it imposed responsibility on the governor without power. The final decisions on spending still lay with the legislature, subject to an all-or-nothing veto of whole appropriation items. Since the departments' money was ultimately controlled by the legislature, the critics felt the legislature, rather than the governor, would control the departments. In the words of Governor Winfield Hammond in commenting on the budget revision bill, the governor would have only "slight control" over state departments.[11]

It was in this context that the legislature proposed the amendment to give the governor power to reduce items of appropriation, as well as to veto them in whole. It seems likely that the

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[9] Smith, "The Eight Proposed Amendments to the Constitution of the State of Minnesota," *St. Paul Pioneer Press*, Oct. 14, 1916, p. 9, col. 4. Minnesota law requires the attorney general to provide an opinion on the effect of each proposed constitutional amendment. See Minn. Stat. § 3.21. Prior to 1992, these opinions were published as legal notices before the election. *See* Laws 1992, ch. 513, art. 3, § 17, amending Minn. Stat. § 3.21 (1990) (eliminating the publication requirement).

[10] *Final Report of the Efficiency and Economy Commission, A Proposed Bill for Reorganizing the Civil Administration of the State of Minnesota* 41-42 (1915). In addition, the commission recommended other standard Progressive Era changes—a civil service merit system and governmental reorganization.

[11] Governor Hammond claimed the budget bill was

> unfair to the Governor in that he will be charged with responsibility in popular opinion that he can not exercise, and in that way it is misleading to the legislature. They will have before them a GUESS by the Governor as to the needs of the departments to which he is a stranger and over which he has but slight control, and their tendency will be to assume that the Governor speaks with knowledge which he does not. Letter to F. A. Duxbury (March 28, 1915) (on file in the Governor's Records, Minnesota State Archives).

A Minneapolis newspaper similarly complained that the bill would make the governor "a sort of clerk for the appropriations committee[.]" Newspaper clipping (ca March 1915) (on file in the Efficiency and Economy Commission file, Governor's Records, Minnesota State Archives).

legislature attempted to respond to the criticism by augmenting the governor's veto power. If the governor could reduce or veto appropriation items, he would have significantly more power over the executive branch departments and more power *vis a vis* the legislature. Again, specific evidence of the actual intent is sketchy.

The voters approved the proposed amendment, but not by the necessary majority of all those voting at the 1916 election. The amendment was approved 136,700 to 83,324 (a 62 percent majority). However, 416,215 total votes were cast in the election (i.e., only about 33 percent of those voting approved the amendment).[12] Thus, it failed to be adopted under the constitutional requirements.[13]

Minnesota Governors' Use of the Item Veto Power

Note on Records of Early Vetoes

The records of the early uses of governors' use of the item veto power are sketchy and the history of early vetoes in this report may not reflect all uses of the power in the 19th and early 20th centuries. For example, records of the item veto by Governor J. A. A. Burnquist, described in the text to the left, do not appear in the laws or the legislative journals. The vetoed section of the bill was not published in the relevant chapter of the laws. The author became aware of it only because it was referred to in an attorney general opinion.

Minnesota governors have used the item veto power sparingly until recently. However, several governors have used the power in creative or expansive ways.

Ten Minnesota governors have used the item veto: J. A. A. Burnquist, Theodore Christianson, Karl Rolvaag, Wendell Anderson, Al Quie, Rudy Perpich, Arne Carlson, Jesse Ventura, Tim Pawlenty, and Mark Dayton. Until the 1990s and the administrations of Governors Carlson, Ventura, and Pawlenty, the item veto power was used very little. A table in the Appendix lists the item vetoes of the Minnesota governors through 2014.

In 1917, Governor J. A. A. Burnquist was the first governor to exercise the item veto power.

Governor Burnquist vetoed a $5,000 appropriation for establishment of a state park in Big Stone County. Because the veto disapproved only the appropriation and did not appear to veto the appropriation rider that directed creation of a commission to acquire the land, the secretary of state requested an opinion from the attorney general as to the status of the rider. The attorney general replied that the rider was "meaningless with the first paragraph [the appropriation] eliminated[.]"[14]

[12] Secretary of State, *Minnesota Legislative Manual*, 83.

[13] The constitution was amended in 1898 to require a majority of all those voting at an election to approve a proposed constitutional amendment. Laws 1897, ch. 345; Secretary of State, *Minnesota Legislative Manual*, 79. If this provision had been in effect in 1876, the original item veto amendment also would have failed. Id., 80.

[14] Op. Atty. Gen. 213-C (April 26, 1917).

In 1929, Governor Theodore Christianson used the item veto power to reduce, rather than veto in whole, an appropriation.

In 1929, Governor Christianson vetoed several appropriations in two appropriations bills. His veto messages make it clear that he was doing so because under the state's then-fiscal system, the spending would have resulted in an increase in the state property tax rate.[15] Thus, these vetoes could equally be considered vetoes of tax increases, as well as spending (appropriations).

In the case of a $5,000 appropriation to the Hospital for Crippled Children, he did not veto the entire appropriation, but chose instead to reduce it to $4,000. It is surprising that a governor asserted the power to reduce appropriations so soon after the failure of the 1915 amendment to grant that authority explicitly.[16] A fair reading of the constitution suggests that Governor Christianson exceeded his power in doing so. In a few states the authority to reduce appropriations has been implied from a general item veto power.[17] However, in the vast majority of states the courts have held reduction power is not implied by the authority to veto "items" of appropriation.[18] The failure of the 1915 amendment supports this reading of the Minnesota Constitution.

The legislature apparently did not directly object to the reduction of the Hospital for Crippled Children appropriation. The veto message was laid on the table by the Senate and never acted on.[19] Nor did anyone file suit to challenge the veto.

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[15] Both veto messages make the governor's rationale on this very clear. For example, he used the following to justify $91,000 of item vetoes in S.F. 444 (Laws 1929, ch. 221):

> Revenues from other sources remain practically constant, and increased expenditures can be made only out of the revenues from property taxation, the rate of which is variable within the limits fixed by the Legislature.
>
> [The reductions under item vetoes] will prevent an increase in the tax levy which would be burdensome to the people. *Senate Journal*, 46th sess., April 18, 1929, 1157.

[16] The veto message did not indicate the legal authority for the governor's asserted power to reduce, rather than veto, an item of appropriation. The relevant part of the message simply said:

> Ordinarily I would not object to appropriations for the Hospital for Crippled Children, for this institution not only is doing much practical good but has a strong sentimental appeal. But a reduction of the amount provided for improvement of grounds from $5,000 to $4,000 will not interfere with the comfort of the children, inasmuch as the school already has beautiful grounds; and the elimination of $10,000 for completion of the basement of the west wing, for a use which is only occasional, will, I am informed, not seriously interfere with the proper functioning of the institution. *Senate Journal*, 46th sess., April 18, 1929, 1158.

[17] See, e.g., *Commonwealth v. Barnett*, 48 A. 976 (Penn. 1901).

[18] See, e.g., *Fairfield v. Foster*, 214 P. 319 (Ariz. 1923); *Stong v. People ex rel. Curran*, 220 P. 999 (Colo. 1923) and cases cited in *Item Veto: State Experience*, 157, fn. 66. The Minnesota Supreme Court confirmed this view in *dicta* in *Inter Faculty Organization v. Carlson*, 478 N.W.2d 192, 194, fn. 2 (Minn. 1991), the first of the Carlson item veto cases. The court divided state item veto powers into three broad types: (1) "item reduction vetoes" under which the governor can reduce appropriations, (2) "amendatory vetoes" under which the governor can amend or veto parts of a bill, and (3) "item vetoes" under which the governor "can delete a specific itemic component or the whole of an appropriation." The court indicated it was the latter, restrictive power that the constitution provides to Minnesota governors.

[19] *Senate Journal*, 46th sess., April 18, 1929, 1159.

Governors Karl Rolvaag and Wendell Anderson used the item veto in routine ways to veto discrete appropriations.

Governors Rolvaag and Anderson vetoed a total of three appropriation items in three separate bills. The vetoed items were standard appropriations (i.e., vetoed language was a variation on the classic appropriation form: $X is appropriated to Y agency for Z purpose). In two instances, the vetoed appropriations were made to individuals as part of the payment of compensation or claims. In one instance, the veto corrected a mistake that a legislator reported to the governor.[20]

Governor Al Quie vetoed 15 items, including statutory language that transferred money from the state bond fund to the general fund.

Beginning with Governor Quie, governors have made more extensive and creative use of the item veto power. Governor Quie item vetoed a total of 15 items, more than all of his predecessors. Fourteen of these were routine vetoes of standard line item appropriations.

In one instance, Governor Quie vetoed an interfund transfer from the bond fund to the general fund. This provision did not directly authorize spending money out of the state treasury, but rather transferred excess money from the state bond fund to the general fund.[21] The transferred money in the general fund would still need to be appropriated by the legislature to permit it to be spent, even if the governor had not vetoed the transfer. These appropriations would be subject to the item veto power. Governor Quie apparently regarded this interfund transfer as "an item of appropriation" that was subject to item veto.[22] This was also the first instance in which the governor vetoed a change in statutory language, rather than an uncodified appropriation.[23] Subsequent governors have also vetoed several interfund transfers and statutory language to the point where this can now be considered to be standard Minnesota practice.[24]

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[20] Governor Rolvaag's veto message explained: "I am vetoing this item because I have been advised by Representative Yngve that this was included in the bill by mistake * * *." *Senate Journal*, 64th sess., May 22, 1965, 2358.

[21] See Laws 1980, ch. 614, § 41.

[22] The meaning of "item of appropriation" in article IV, section 23, is not clear. It could include any provision that moves money from one account or fund to another. An alternative meaning would limit appropriations to the authority to spend public money—i.e., to actually pay money out of the state treasury. This definition has some support from the constitutional language that provides, "No money shall be paid out of the treasury of this state except in pursuance of an appropriation by law." Minn. Const. art. XI, § 1.

Governor Quie's veto message did not address this issue. It only discussed the merits of transferring excess money in the bond fund to the general fund. *House Journal*, 71st sess., April 24, 1980, 7382.

[23] The vetoed language of the section was to be codified in Minnesota Statutes, section 11.15, subdivision 4. This section was repealed in a separate recodification of the state investment law also enacted by the 1980 Legislature. Laws 1980, ch. 607, art. 14, § 48.

[24] See the text below and the table at the end of the brief for examples of similar vetoes of interfund transfers by Governors Perpich, Carlson, and Ventura. None of these vetoes of a pure interfund transfer (i.e., that did not directly result in authority to spend the transferred money for another purpose) have been challenged in court. *Johnson v. Carlson*, 507 N.W.2d 232 (Minn. 1993), discussed below, upheld a veto of statutory language that provided a transfer with authority to spend the money for another purpose.

Governor Rudy Perpich used the item veto power to veto restrictions on the use of appropriations and to veto reductions in appropriations. The legislature in two instances protested his use of the veto power, although litigation did not result.

Governor Perpich in his second and third terms did not use the item veto power markedly more than Governor Quie, but he used the power in unusual ways. Only a few of his vetoes were routine vetoes of standard line-item appropriations. Governor Perpich more frequently used the item veto to reduce restrictions on state spending imposed by the legislature and to give the executive branch more discretion over spending than the legislature wished it to have. Only rarely were the vetoes straightforward efforts to eliminate an item of state spending.

In 1983, Governor Perpich vetoed appropriations for specified activities in two state agencies. However, his veto message indicated that the amounts vetoed were to be restored to the departments' general budgets to be used for other purposes.[25] One way to view these vetoes is as an attempt to veto conditions or restrictions on the lump sum appropriations to these agencies. Most courts have held that this is not a legal use of the item veto power, except where the state constitution provides an expansive veto power.[26]

A number of legislators questioned the governor's legal authority to permit these moneys to be used by the two state agencies. In response, Governor Perpich essentially amended his veto message by withdrawing his suggestion that the appropriations could be spent for other purposes.[27]

In 1987, Governor Perpich item vetoed a provision providing for the allocation of moneys received by the state in settlement of antitrust litigation for overcharges by oil companies. The vetoed section specified how these oil overcharge moneys were to be spent. However, it also prohibited spending of the money until certain conditions were met. In his veto message, Governor Perpich implied that the veto would permit these moneys to be spent without regard to the restrictions.[28]

The legislature responded by passing a concurrent resolution, stating its view that the portions of the vetoed section that were not appropriations continued in effect as law.[29] The resolution stated that "items of appropriation" subject to the veto power are limited to provisions that "authorize

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[25] The message stated:

> It is my intention that funds specified in the vetoed provisions be restored to general appropriations for the programs as specified [elsewhere in the bill]. *House Journal*, 73rd sess., June 21, 1983, 6237.

[26] See *Item Veto: State Experience*, 148-152.

[27] Governor Perpich wrote:

> I understand that there is a question whether vetoed funds can be restored to the general appropriation, or whether they should be deemed to cancel back to the General Fund. I do not believe this issue has been litigated before in Minnesota. Because of this legal uncertainty, I do not believe it appropriate to insist that the affected funds be restored to the general appropriations. *House Journal*, 73rd sess., June 21, 1983, 6237.

[28] *House Journal*, 75th sess., June 12, 1987, 7604-7605.

[29] House Concurrent Resolution No. 27, *House Journal*, 75th sess., April 18, 1983, 12098.

the payment of money out of the state treasury." The legislature's concern was that "silence by the legislature on the governor's purported veto of [the nonappropriation provisions] might wrongly be construed as acceptance of a governor's power to veto items that are not appropriations of money[.]"[30] The money was not spent, and in the following legislative session was reappropriated under a different mechanism that satisfied the governor's objections.[31]

On five separate occasions in 1989 and 1990, Governor Perpich vetoed provisions that reduced appropriations. The net effect of these item vetoes was to increase the amount of state spending. In three instances in 1989, Governor Perpich vetoed provisions that transferred the authority to spend money from one account or agency to another. These vetoes did not reduce overall spending, but changed the agency or program with authority to spend the money.

Governor Arne Carlson made extensive use of the item veto power, vetoing many items and using the veto power in expansive ways.

The election of Arne Carlson as governor in 1990 represented a sea change in the frequency of use of the item veto power by Minnesota governors. In his first (1991) legislative session, Governor Carlson vetoed more items (82 items, containing over $116 million in appropriations[32]) than all of his predecessors combined. Over the eight years of his governorship, he vetoed 238 items, containing appropriations of $263 million. Carlson item vetoes also resulted in several court challenges to the use of the power.

Governor Carlson used the veto power in more expansive ways than his predecessors. Several of these vetoes followed practices used by Governors Perpich and Quie, but some of them had no precedent in Minnesota. Examples of Governor Carlson's expansive uses of the veto power include the following:

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[30] Ibid.

[31] Laws 1988, ch. 686, art. 1, § 37.

[32] Counting of items is somewhat arbitrary. The count of 82 items is based upon the number of separate appropriations vetoed. If a lump-sum appropriation was broken down into several component items and the entire lump sum was vetoed, it was counted as one item. Appropriations divided into separate amounts for two fiscal years were also counted as one item.

The $116,832,000 amount is derived from the amount of vetoed appropriations that appeared in the bills or are referred to in the Laws of Minnesota. In several cases, the governor's messages also vetoed amounts that did not appear in the bills, but were listed only in the working papers of the legislative committees. For example, in the 1991 human service bill, no specific dollar amounts in the text of the bill were vetoed, but the governor's veto message identified $855,000 in specific appropriations, apparently from the conference committee worksheets, that were vetoed. Laws 1991, ch. 292. The veto message claims "savings of approximately $1 million for FY92-93 biennium" from the line item vetoes. Letter from Gov. Arne H. Carlson to Robert Vanasek, Speaker of the House, and Jerome Hughes, President of the Senate at 7 (June 4, 1991). The Department of Finance (DOF) claimed veto savings for all of the governor's vetoes of $113,931,000. Dept. of Finance, Governor's Vetoes 1991 Legislative Session (June 24, 1991). The DOF amounts reflect reductions in the higher education vetoes of noninstructional costs that were not appropriated out of the general fund and were not intended to be vetoed by the governor. As discussed in the text below, these vetoes were invalidated by the Supreme Court in *Inter Faculty Organization v. Carlson*, 478 N.W.2d 192 (Minn. 1991).

- Vetoing of amounts that do not appear in the text of the bill, but only in legislative working papers[33]
- Rewriting of both proposed and existing statutory language by marking up the language in bills[34]
- Vetoing a transfer of money between two state funds or a provision specifying the fund into which tax receipts are deposited, although the vetoed provisions did not permit money to be paid out of the state treasury for any purpose[35]
- Vetoing restrictions on appropriations or a fee increase, the proceeds of which were included in a lump sum appropriation[36]
- Vetoing of bill language that did not explicitly authorize or limit the spending of state money[37]
- Vetoing language that required an executive branch agency to complete projects out of its general appropriation (enacted in a prior law) without a specific dollar appropriation for these purposes[38]
- Vetoing language that increased the number of legislative leadership provisions from three to five[39]

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[33] This was done in three separate bills in 1991. In two bills, the legislature sought to bind the executive branch to the allocations made in the working papers. See Laws 1991, chs. 233, § 21, subd. 1; 292, art. 1, § 18. In the third case, the working papers apparently were not intended by the legislature to be binding. Laws 1991, ch. 345.

[34] See, e.g., Laws 1991, ch. 233, § 94; and the Revisor's note for Minn. Stat. § 297B.09, subd. 1 (1991 Supp.).

[35] See ibid. In 1993, Governor Carlson vetoed a provision that provided for deposit of 11 percent of state lottery revenue in a state arts account, but did not veto the section of the bill that enacted an open and standing appropriation of these moneys. Laws 1993, ch. 369, §§ 59 (appropriation, which was not vetoed), 126 (vetoed deposit provision). The effect of allowing the appropriation to go into effect is unclear; without the deposit provision there would be no money in the account to fund the appropriation. The legislature in 2001 repealed the statute containing the open and standing appropriation. Laws 2001, 1st spec. sess., ch. 10, art. 2, § 102. Governor Quie made analogous use of the veto power in 1980, see note 22 above.

[36] See, e.g., Laws 1991, ch. 345, art. 1 § 12. The vetoed language consisted of:

> Two new staff positions and one data entry position in the office of the state auditor that are required by increased research and analysis duties shall be funded through increased audit and other fees to local units of government.

As noted in the text, Governors Quie and Perpich had vetoed similar provisions.

[37] See Laws 1991, ch. 356, art. 1, §§ 3, subd. 3; 4, subd. 3; 5, subd. 3. The vetoed language in each case provided that the legislature "estimated that noninstructional expenditures will be" the specified amount. These estimates included nongeneral fund moneys that the governor did not veto, according to an explanation by the Commissioner of Finance. As discussed later in the text, these vetoes were invalidated by the Supreme Court in *Inter Faculty Organization v. Carlson*, 478 N.W.2d 192 (Minn. 1991).

[38] Laws 1994, ch. 635, art. 1, §§ 34, 36-37. These vetoes and the attorney general's analysis of their legality is discussed more fully in the text below.

- Vetoing an appropriation in a bill containing only one appropriation[40]

Several of Governor Carlson's item vetoes were challenged in court, and vetoes were invalidated in two cases. The Minnesota Supreme Court invalidated his item vetoes of three provisions of the 1991 higher education appropriations bill, while upholding his 1991 veto of provisions reallocating the proceeds of taconite taxes. In addition, a 1995 Carlson veto was invalidated by the Ramsey County District Court and the decision was not appealed. The details of these cases are discussed in more detail in the final section of this information brief. No other governor's item vetoes have been invalidated by the courts.[41]

The attorney general opined in another instance that Governor Carlson exceeded his constitutional power in four vetoes of program mandates in the 1994 transportation bill. In 1993, the legislature appropriated money for various general transportation purposes.[42] In 1994, the legislature passed a transportation bill that directed the Department of Transportation to complete four transportation projects involving installation of traffic signals (one) or noise barriers (three) in specified locations.[43] These provisions did not include either appropriation language (which had been enacted in the 1993 law) or a numerical amount for the projects' costs. Governor Carlson signed this legislation, but vetoed these four program mandates. The veto message stated each of these provisions "represents a significant cost to the state trunk highway fund, and none of which require funding in this non-budget year."[44]

Three members of the House of Representatives requested an opinion from the attorney general as to the validity of these four vetoes. The attorney general responded in a letter that concluded:

> [W]hile it may be possible to make an argument in support of the Governor's action, it is very unlikely that the courts would consider the quoted provisions "items of appropriation" subject to veto.[45]

The attorney general's letter reached this conclusion by applying Minnesota and other states' court decisions on the definition of "item of appropriation" to the provisions. He concluded that the vetoed provisions were not appropriations, since they neither identified sums of money nor authorized money to be drawn from the state treasury.[46] He rejected the governor's arguments

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[39] Laws 1997, ch. 202, art. 2, § 3. Because this would increase the compensation paid to these legislators, the vetoed would have increased spending for this purpose and arguably could be considered an "appropriation" as a result. *See* Minn. Stat. § 3.098, subd. 3.

[40] There are two instances of this. *See* Laws 1991, chs. 178 and 179. The constitution limits the item veto power to bills containing "several items of appropriation[.]" Minn. Const. art. IV, § 23.

[41] Nor is the author aware of any cases challenging the legality of vetoes by any other Minnesota governor.

[42] Laws 1993, ch. 266.

[43] Laws 1994, ch. 635, §§ 34, 36-38.

[44] *House Journal*, 78th sess., May 10, 1994, 8812. The governor's veto message also identified specific dollar costs for each of the four mandates, per estimates made by the Department of Transportation. These amounts also appeared in the legislative working papers for the bill.

[45] Letter from Hubert H. Humphrey III to Representatives Marc Asch, Tom Osthoff, and Dee Long, dated June 20, 1994, in the author's files, p. 2.

[46] Ibid., 3-4.

that they were analogous to transfers (which presumably could be vetoed), since they required spending money on projects rather than on other projects that otherwise would have been funded. The provisions, at their core, did not change the authority to spend money or the basic purpose for which the money was to be spent (transportation), according to Attorney General Hubert Humphrey.[47] Although the legislature and individual legislators contemplated bringing a court action to challenge these vetoes, they did not do so, and the projects were not constructed under the vetoed provisions.

In response to another of Governor Carlson's 1994 vetoes, the attorney general issued an inconclusive opinion as to whether the legislature could condition the effectiveness of other provisions of a bill on the governor not vetoing a related appropriation. In response to Governor Carlson's extensive use of the item veto, the legislature began to draft bills anticipating the possibility that the governor would veto some appropriations. For example, in 1994 the legislature made a number of changes in the state subsidy program for the ethanol industry. These included: (1) increasing the maximum limit or appropriation for subsidy payments from $10 million to $20 million; (2) increasing the per-gallon payment amounts; (3) providing payments for use of ethanol for cogeneration purposes; (4) extending the expiration date for the subsidy program; (5) increasing the maximum payments to individual producers; and (6) repealing the excise tax credit for ethanol blended with gasoline. Anticipating that the governor might veto the $10-million increase, the legislature provided that all of the provisions were "non-severable" and that if the appropriation were vetoed, the other sections were void.[48] Governor Carlson did, in fact, veto only the $10-million increase and not the other provisions.[49]

Senator Steven Morse requested an opinion from Attorney General Humphrey as to the legal effect of the veto. The attorney general concluded that Governor Carlson's veto was a valid use of the veto power, since the $10-million increase in the maximum limit would have provided additional spending authority.[50] He analyzed and discussed the nonseverability provision, but did not reach a definitive conclusion as to its effect. The analysis largely focused on whether this was an unconstitutional delegation of legislative power.[51] Because the provisions were related to the vetoed appropriation (i.e., they were all related to ethanol and the funding level), the attorney general was unwilling to "conclude that the non-severability provisions of section 66 are beyond

[47] It seems likely that if these were items of appropriation subject to veto that a similar argument could be made that any provision in a bill that requires the executive branch to spend money to carry it out would be subject to the item veto.

[48] Laws 1994, ch. 632, art. 2, § 66.

[49] *Senate Journal*, 78th sess., May 10, 1994, 10697.

[50] Letter from Attorney General Hubert H. Humphrey III to Senator Steven Morse, dated September 2, 1994, pp. 1-2 (copy in the author's files).

[51] Ibid., 3-5. It would also seem reasonable to question such a nonseverability provision as an unconstitutional attempt to defeat the governor's item veto power. On the one hand, it seems clear that the legislature could not make all of a bill's provisions nonseverable and void if the governor vetoed one appropriation in the bill. Adding such a provision to a bill would be the equivalent of negating the governor's constitutional item veto power. On the other hand, use of more limited nonseverability provisions may be permissible, if they are viewed as the equivalent of conditions on appropriations whose validity is closely linked with and, thus, can be tied to the appropriation.

the legislative authority."[52] The 1995 Legislature repealed the relevant provisions before they were to take effect on July 1, 1995, so this never became a "live" issue.[53]

Governor Jesse Ventura extensively used the item veto power; he is the only governor to have item vetoes overridden by the legislature.

Jesse Ventura was elected governor in 1999 as the candidate of the Independence Party. He continued the tradition of his immediate predecessor of using the item veto power to line-out many items. Over his four-year term, he vetoed 175 items containing over $533.6 million in appropriations. Unlike Governors Perpich and Carlson, however, he did not attempt to use the power in creative ways (e.g., to increase spending authority, to eliminate restrictions on appropriations, or to negate nonspending items), but rather simply vetoed discrete items of appropriations. He particularly tended to veto capital spending items, such as provisions of bonding bills; at least 114 of his 175 item vetoes were for capital projects and 107 of these were in one bill, the 2002 bonding bill. In his somewhat flamboyant style, he marked some of his vetoes on the original bills with a "pig stamp"—a rubber stamp with the image of a pig on it—to indicate that he considered the provisions to represent "pork barrel" spending. Four of Governor Ventura's item vetoes were overridden by the legislature.[54]

Governor Tim Pawlenty used the item veto power extensively during his second term.

Over his two terms, Governor Pawlenty item vetoed 202 items containing over $1,126.6 million in total appropriations. During his first term in office (2003–2006), Governor Pawlenty made relatively sparing use of the item veto. He vetoed 25 items containing $11.8 million in appropriations in four bills. During his first term in office, the House of Representatives was controlled by the same political party (Republican) as the governor. This situation undoubtedly prevented many items to which the governor had objections from being included in bills presented to him.

During Governor Pawlenty's second term (2007–2010), the situation was reversed with both houses of the legislature under the control of the opposite (Democratic) party. During his second term, the governor vetoed 177 items containing over $1,115 million in appropriations. Although Governor Arne Carlson vetoed more individual items, the total amount of the Pawlenty item vetoes far exceeds those of any other governor—by more than a factor of two. This is partially explained by large vetoes of some individual appropriations (such as the 2009 veto of the $381 million appropriation for General Assistance Medical Care for fiscal year 2011 and several large bonding projects). The legislature attempted unsuccessfully to override the $381 million veto of the General Assistance Medical Care appropriation.

Governor Pawlenty's vetoes tend to follow the usual practice of simply negating proposed spending for specific projects or programs. Unlike Governors Perpich and Carlson, he generally did not attempt to expand the power. However, in two instances involving provisions that combined increases in revenue, as well as appropriations of the resulting money, he explicitly

[52] Ibid., 5.

[53] Laws 1995, ch. 220, § 141 (effective May 25, 1995).

[54] See the discussion below on pages 16 to 17.

limited his veto to the spending authority.[55] However, as a practical matter, the item vetoes negated the revenue provision as well.[56]

Governor Mark Dayton has used the item veto power sparingly and in routine fashion.

During his first two years in office, Governor Dayton did not use the item veto power. In the 2013 session, he vetoed three items in two bills, all routine vetoes of discrete appropriations, totaling $11.36 million in funding. In 2014, Governor Dayton vetoed an open and standing appropriation of the receipts of a newly created account in the special revenue fund to the legislative auditor.[57] The provision of the bill imposing the fees that fund the account was not vetoed.[58]

Legislative Overrides of Item Vetoes

The constitution authorizes the legislature to override item vetoes.

The constitution directs the governor, in exercising the item veto power, to

> append to [the signed bill] a statement of items he vetoes * * *. If the legislature is in session, he shall transmit to the house in which the bill originated a copy of the statement, and any items vetoed shall be separately reconsidered. If on reconsideration any item is approved by two-thirds of the members elected to each house, it is a part of the law notwithstanding the objections of the governor. Minn. Const. art. IV, § 23.

This process parallels that for overriding vetoes of entire bills. A two-thirds majority of the members of each house must separately repass an item to override a gubernatorial item veto. The governor is not required to transmit the item veto statement to the legislature, if the

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[55] Laws 2010, ch. 361, art. 5, §§ 9, 21. Section 9 imposed an annual $800,000 assessment on public utilities to pay for supplemental staffing by the Public Utilities Commission. The item veto was limited to the words "and appropriated to the commission." Section 21 directed Xcel Energy to transfer $90,000 from the renewable development account the utility maintains under a statutory mandate to the state special revenue fund. The section also appropriated this money for a grant to the city of Minneapolis. The item veto was limited to the grant appropriation. In both cases, both the marked up bill language and the governor's veto message make the limitation to the appropriation (with no effect on the revenue generating provision) clear. *Senate Journal*, 86th sess., Communications Received Subsequent to Adjournment, 12395. In both instances, it appears that the practical effect was to also negate the revenue provisions.

[56] For example, Laws 2010, chapter 361, section 9, was codified as section 216B.62, subdivision 3a, and remains in the statutes, but based on information from the Commerce Department, this $800,000 assessment on public utilities was not and is not now being imposed. Similarly, the $90,000 transfer from the renewal development account was not made, based on information provided by Xcel Energy.

[57] Laws 2014, ch. 293, § 1.

[58] Laws 2014, ch. 293, § 6. The governor's veto message expressed a preference for the legislature explicitly appropriating this money, rather than providing an open appropriation of all the fees collected. Letter from Mark Dayton, Governor, to Sandra L. Pappas, President of the Senate, dated May 28, 2014, available: http://mn.gov/governor/images/2014_05_28__Letter_Chapter_293.pdf.

legislature is not in session.[59] As a result, the legislature cannot override item vetoes made after final adjournment, since it is not in session. It is unclear if calling a special session after final adjournment would permit an override of an item veto that was made after final adjournment. In practice, most Minnesota governors have transmitted item veto statement made after final legislative adjournment to the legislature.[60] But the issue of attempting an item veto override in a special session convened after adjournment of a legislative session has never come up.[61]

The Minnesota Legislature has only overridden four item vetoes, all made by Governor Ventura.

Before the 1992 session, the legislature had never attempted to override an item veto. The very sparing use of the power by Minnesota governors did not give much occasion to challenge vetoes. In January 1992, the House of Representatives unsuccessfully attempted to override two of Governor Carlson's vetoes. Both motions failed to receive the necessary two-thirds majority vote.[62]

During the Ventura administration, as noted above, the legislature overrode four item vetoes. As a representative of a third political party, Governor Ventura did not have a strong or natural constituency in the legislature. This may have made it easier to override his item vetoes. During the 2000 legislative session, the legislature overrode four of his vetoes containing appropriations of $5,646,000 in the capital bonding bill.[63] These remain the only instances of overrides of item vetoes by the Minnesota Legislature. The 2000 Legislature also attempted unsuccessfully to override seven other of Governor Ventura's item vetoes in the same appropriations bill. All of the motions failed to receive the necessary two-thirds majority in the House of Representatives, the house of origin for the bill.[64] Similarly, the 2009 Legislature attempted to override Governor

[59] This language likely requires the legislature to be finally adjourned (or adjourned *sine die*) to relieve the governor of the duty to transmit the statement. Under *State v. Hoppe*, the biennial session is treated as a single session and the legislature is, thus, likely to be considered to be in session for purposes of a requirement to transmit item vetoes, even if it has adjourned until the start of the even-numbered year portion of a biennial session. 215 N.W. 2d. 797 (Minn. 1974). In the words of the court, during the interim period between odd-number and even-number year meetings of the legislature, the legislature is in "adjourned session[.]" Id., 799.

[60] See, e.g., *House Journal*, 85th sess., May 29, 2008, 13040 (item veto letter from Governor Pawlenty, for which the item veto was made after the final adjournment of the 2007-2008 legislature). However, the first item veto by Governor J. A. A. Burnquist, discussed in the text above on page 7, was made after final adjournment and apparently was not transmitted to the legislature, since references to it do not appear in the legislative journals.

[61] For vetoes of entire bills, the constitution explicitly provides for "pocket veto" of bills passed during the last three days of the session (i.e., before final adjournment). Thus, it is clear that the legislature could not override the pocket veto of a bill in a subsequent special session of the legislature. By contrast, the constitution is silent as to what occurs for item vetoes made for bills the governor signs after the legislature has finally adjourned. This raises the possibility that the legislature may be able to override an item veto during a special session convened after final adjournment.

[62] *House Journal*, 77th sess., January 13, 1992, 8937-8938; *House Journal*, 77th sess., January 14, 1992, 8971-8972.

[63] *House Journal*, 81st sess., May 17, 2000, 10054-10055; 10070-10071 (Lanesboro Arts Center grant); 10055-10056, 10072-10074 (Guthrie Theater grant); 10057-10058 (multicultural development grants); and 10063-10064 (grant to purchase an organ donor vehicle).

[64] *House Journal*, 81st sess, May 17, 2000, 10058-10059 (grant for Minnesota Center for Agricultural Innovation); 10059-10060 (grant for Koochiching County Cold Weather Testing Center); 10060-10061 (grant to the

Pawlenty's veto of the fiscal year 2011 appropriation for the General Assistance Medical Care program, but failed to obtain the necessary two-thirds majority.[65]

Court Challenges to Item Vetoes

Item vetoes are subject to judicial review as to whether the governor properly exercised the veto power under the constitution.

In addition to the explicit constitutional authority of the legislature to override item vetoes, judicial review of the constitutional validity of item vetoes provides another method of invalidating or overturning item vetoes. Legislators and legislative bodies are frequently the plaintiffs in these lawsuits, both in Minnesota and in other states, although cases are also brought by private plaintiffs whose interests are affected by the vetoes.[66] A court challenge could raise the legality of the process used, as well as whether the provision was subject to the item veto power. However, all of the challenges in Minnesota have focused on the latter issue, that is, whether the provision was an item of appropriation that the governor could veto.[67]

Only a few item veto cases—all relating to vetoes by Governor Arne Carlson—have been litigated in Minnesota.

Five court cases were filed challenging vetoes by Governor Carlson. Three of these resulted in final decisions on the merits with two invalidating vetoes and the third upholding the governor's veto. Two of the cases were decided by the Minnesota Supreme Court, one upholding and one invalidating the vetoes. In the third case, the district court voided the veto and the governor did not appeal. These three decisions are discussed in the next section. A fourth case was dismissed on the basis that the plaintiffs did not have standing.[68] The author does not have an official record of the final resolution of the fifth case, but it is clear that the veto was not invalidated.[69]

Landfall Housing and Redevelopment Authority for retaining walls); 10061-10062 (grant for St. Croix Valley Heritage Center); 10065-10066 (grant to Upper Minnesota Regional Development Center); 10067-10068 (grants for community law enforcement and community grants); and 10068-10069 (grant for correctional facility).

[65] *House Journal,* 86th sess., May 17, 2009, 6560-6563 (87-47 vote).

[66] In the three Minnesota item veto court cases actually decided on the merits, individual legislators were plaintiffs in two of the cases (along with private plaintiffs in one of the cases).

[67] By contrast, the process issue has arisen in the context of vetoes of entire bills. *State ex rel. Putnam v. Holm*, 215 N.W. 200 (Minn. 1927) (holding governor's return of bill was outside of the three-day constitutional period).

[68] A group of public employee unions filed suit in Ramsey County District Court, challenging the governor's veto of the transfer of chemical dependency funds. *American Federation of State, County and Municipal Employees, Council 6 v. Carlson* (Ramsey County District Court, C7-91-11150, Nov. 25, 1991). *See* Laws 1991, ch. 292, art. 1, § 1, subd. 6. The district court dismissed the case on the grounds that the plaintiff employee organizations had not shown they would be adversely affected by the veto.

[69] The Minnesota Transportation Alliance, a group of contractors, local governments, and others interested in transportation spending filed suit challenging Governor Carlson's veto of the transfer of a portion of the motor vehicle excise tax receipts to the highway user and transit funds. *Minnesota Transportation Alliance v. Carlson*, No. C2-91-14327 (Ramsey County District Court, 1991). The plaintiffs argued that these provisions are not

The court cases provide some general guidance on the parameters of the item veto power beyond the constitutional language.

The Supreme Court made it clear that it views the item veto power as a limited power that is to be narrowly construed to avoid executive intrusion on the legislative branch. The court outlined a definition of "item of appropriation" —that is, the necessary condition for exercising the item veto power—as having two key components:

- *A "separate and identifiable sum" of money in the state treasury*. This amount need not be specifically expressed in law as a number or dollar amount, but must be determinable from the terms of bill itself (for example, it could be the amount of the collections from a specified tax or fee).

- *Designation or dedication of the money to a specified purpose*. That is, the provision must require the money to be used for some purpose.

An item veto need not reduce state spending. It is sufficient if it reduces the spending under the vetoed appropriation. A valid item veto may cause spending for another purpose to rise (compared to the bill's provisions), because the money otherwise would have been spent under the vetoed appropriation. However, the item veto power cannot be used to eliminate restrictions on spending an appropriation or to increase spending above the amount of the total amount authorized by the bill or prior law.

***Inter Faculty Organization v. Carlson*:**

The court held "nonbinding" language that neither permitted identifying dollar amount(s) from specific state funds nor restricted use of the money to specified purposes was not an item of appropriation subject to veto.

Governor Carlson vetoed three provisions of the 1991 higher education appropriations bill relating to the noninstructional costs of the boards for the state universities, community colleges, and technical colleges.[70] Each provision stated "The legislature estimates that noninstructional expenditures will be [$X] for the first year and [$Y] for the second year."[71] The governor vetoed the amount for the second year in each case. He apparently regarded the "estimates expenditures will be" language to be the same as "appropriates." These estimates included both general fund components and "flow through funds" or other revenues of the education systems.[72] Governor

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appropriations that are subject to the item veto power. On the merits, this case raised issues very similar to the veto upheld by the Minnesota Supreme Court in *Johnson v. Carlson*, 507 N.W.2d 232 (1993), discussed in the text below. The plaintiffs may have agreed to dismissal of the case after that decision.

[70] Laws 1991, ch. 355, art. 1, §§ 3, subd. 3; 4, subd. 3; and 5, subd. 3.

[71] Ibid.

[72] The higher education institutions had ongoing statutory or standing appropriations permitting them to spend these moneys—e.g., tuition and fees—that were not part of the bill presented to the governor. *See, e.g.,* Minn. Stat. § 136.11, subd. 2 (1990) ("All fees received are appropriated to the board for the purposes for which they are charged.").

Carlson only intended the veto to apply to the general fund amounts. These amounts could only be determined from the legislative working papers.[73]

A group of public employee unions and a student association filed suit, challenging the governor's item veto of noninstructional costs for community colleges, technical colleges, and state universities. These groups argued that the language vetoed by the governor was not an item of appropriation, but rather a statement of nonbinding intent by the legislature. The Minnesota Supreme Court agreed with the plaintiffs and voided the vetoes.[74]

The court considered the item veto power a limited power for two reasons. First, the item veto power is not a traditional executive power, but rather an exception to the legislature's power. "As an exception, the power must be narrowly construed to prevent an unwarranted usurpation by the executive of powers granted to the legislature in the first instance."[75] Second, because the power is limited to vetoing "items"—not a part or parts of items—it is "a negative authority, not a creative one—in its exercise the power is one to strike, not to add to or even to modify the legislative strategy."[76]

The court defined an "item of appropriation" as

> a separate and identifiable sum of money appropriated from the general fund and dedicated to a specific purpose.[77]

This definition has two parts: (1) an identifiable sum of money and (2) dedication or restriction to a specific purpose. In applying the definition, the court concluded the vetoed language did not meet it for three reasons. First, it was not "identifiable" in the bill—the amounts could only be determined from the legislative working papers.[78] Second, the "estimates" language suggested the legislature did not intend these amounts to be binding. Finally, the amounts were not dedicated to a specific purpose. In the court's view, these "estimates" must not have been authorizations to spend money, but rather were the legislature's attempt "to demonstrate that it complied with its own announced intention to fund but a part of the total costs."[79] The real appropriation permitting the higher educational institutions to spend state money for instructional costs was part of the larger appropriation elsewhere in the bill.

The bill language at issue in the case is unusual and similar methods are rarely used to provide funding of other government functions. Probably in recognition of that fact, the court made it

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[73] *Inter Faculty Organization v. Carlson*, 478 N.W.2d 192, 194 (Minn. 1991).

[74] Ibid., 196-97.

[75] Ibid., 194.

[76] Ibid.

[77] Ibid., 195. Although the court referred to "general fund" in its definition, it seems clear that the item veto power extends to appropriations from other state funds. The court likely included that reference because the facts of the case—i.e., the estimates in the language vetoed—involved money from both the general fund and special funds and the governor was attempting to veto only the general fund money.

[78] Ibid., 196.

[79] Ibid., 197.

clear that it was limiting its decision to the particular facts of and the "narrow question presented by" the higher education bill vetoes.[80] As a result, the main significance of the case is the court's articulation of its definition of an "item of appropriation." However, the actual decision or holding of the case provides little concrete guidance as to how the court will apply that definition in other, more typical contexts.

Johnson v. Carlson:

Reallocation of the use of designated state tax revenues to a different purpose is an item of appropriation subject to veto.

The other case decided by the Supreme Court, *Johnson v. Carlson*,[81] also involved a 1991 veto by Governor Carlson of moneys for higher education. However, the vetoed language involved a somewhat more typical legislative formulation; it essentially transferred a portion of the taconite production tax receipts from the funds (and prior spending authority) in which they were deposited to instead "be paid to the commissioner of iron range resources and rehabilitation to be used to pay the cost of providing higher education services [as provided under another section of the bill]."[82] This transfer or allocation was equal to the amount of the revenues resulting from an increase in the tax rate enacted in 1990.[83] Governor Carlson item vetoed the language that authorized payment of these taconite tax receipts to the commissioner. Senator Doug Johnson and several private plaintiffs filed suit challenging the veto.[84]

In challenging the validity of the veto, plaintiffs made three arguments: (1) Item vetoes must reduce spending. Because this provision simply shifted or transferred spending from one purpose to another and did not reduce overall spending, it was not an item of appropriation. (2) Following the definition in *Inter Faculty Organization*, the amount could not be identified from the bill, since it depended upon tax collections attributable to the tax rate increase. (3) Use of taconite production tax revenues, which are paid in lieu of local property taxes, is not subject to item veto.

The Supreme Court upheld the item veto, reversing the Court of Appeals' decision. According to the court, the legislative language met the definition of an item of appropriation. It identified a sum of money as the tax collections attributable to the rate increase. It wasn't necessary that the numerical amount be stated in the bill, but rather the "separate and identifiable sum of money" in *Inter Faculty Organization* was a "functional" concept that permitted a specific amount to be identified.[85] Second, it dedicated this money to pay for a specific purpose, the

[80] Ibid., 195.

[81] 507 N.W.2d 232 (Minn. 1993).

[82] Ibid., 233.

[83] Ibid.

[84] The district court upheld the veto and the court of appeals reversed, invalidating the veto. Ibid., 232. *Johnson v. Carlson*, 494 N.W. 2d 516 (Minn. App. 1993).

[85] *Johnson v. Carlson*, 507 N.W.2d 232, 233-34 (Minn. 1993). The court did not elaborate on how this differed from the "estimates" in *Inter Faculty Organization*. It may be that the court considered the general fund money authorized in *Inter Faculty Organization* to be subject to control (by setting fees and tuition rates) by the higher education institutions, creating uncertainty as to the amount. By contrast, the tax rates in *Johnson v. Carlson*

designated higher education contracts. The fact that the appropriation did not reduce overall state spending was not relevant; the veto did reduce the appropriation and spending for the designated higher education contracts. The purpose of the item veto power was not necessarily to reduce overall spending, but to put a check on " 'pork-barreling,' the practice of adding extra items to an appropriation bill which the governor could not veto without vetoing the entire appropriation bill."[86]

The court also rejected the notion that use of taconite production tax revenue was immune from the item veto power, since these revenues derive from a state imposed tax and are deposited in the state treasury.[87]

Kahn v. Carlson:

The Ramsey County District Court held that a provision, directing the executive branch to reduce a group of items in an appropriations bill by $1 million, was not itself an item of appropriation that was subject to veto.

The third decided case challenging Governor Carlson's item vetoes involved the 1995 state government finance bill appropriation for the Department of Finance. The legislature constructed this bill in a way that appropriated a total dollar amount to the department. This dollar amount was allocated between the two fiscal years of the biennium and among the various functions or sections of the department. However, the final subdivision of the section provided a "general reduction" of $1 million and stated:

> The commissioner of finance shall make reductions of $1,000,000 from programs funded in this section. The reductions may be made in either year of the biennium.[88]

Governor Carlson signed the bill but struck out this subdivision. His veto message did not indicate his rationale but simply stated he was approving the bill with the exception of that provision.[89] The effect of the veto was to increase the total permitted spending or appropriations for the Department of Finance by $1 million more than the version of the bill that passed the legislature.

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were already set and thus the amounts would only determined by the level of private activity (i.e., the number of tons of ore mined). It would have been helpful if the court had explained more precisely the difference between the two cases in this regard.

[86] Ibid., 235.

[87] This leaves open the question of whether the governor could veto a provision that designates some use of purely local government funds, such as property tax revenues, that are never deposited in the state treasury. Changes in the use of local sales tax revenues, which are collected by the state department of revenue, deposited in the state treasury and, then, transmitted to cities or counties, seem more likely to be subject to item veto, although the local jurisdiction must impose the tax, unlike the taconite tax that was imposed by state law.

[88] Laws 1995, ch. 254, art. 1, § 14, subd. 8.

[89] *Senate Journal*, 79th sess., June 1, 1995, 5248.

Two legislators, Representative Phyllis Kahn, chair of the House Government Operations Committee, and Representative Tom Rukavina, chair of the State Government Finance Division of the House Government Operations Committee, filed suit challenging the validity of the veto. They argued that: (1) the vetoed subdivision was part of the overall appropriation and was not a separate item of appropriation, and (2) the item veto power could not be used to increase appropriations above what was authorized in the original legislation, permitting spending above the amount of the original appropriation authorized by the legislature. Governor Carlson, by contrast, argued that the $1-million reduction was a separate item of appropriation, following cases in other states that held reductions in previously enacted appropriations (i.e., in another law) were items of appropriations. The district court agreed with the plaintiffs in concluding that a bedrock part of an appropriation was "an authorization to 'expend' an amount of money in the treasury."[90] This was not present in the "reduction" language, which was instead a direction to the executive branch to reduce the appropriation, as it saw fit. Thus, the court concluded, it was the opposite of an appropriation: "Rather than an appropriation, it appears to be an abdication of the power to appropriate."[91] As a result, the court held the item veto to be "null, void, and of no legal effect."[92] The governor did not appeal the decision.

Because this is a trial court decision, its precedential value is limited. Moreover, it is worth noting that the decision may not be inconsistent with decisions in other states holding that the governor can veto reductions of already enacted appropriations.[93]

[90] *Kahn v. Carlson* (Ramsey County District Court, C8-95-10131) p. 9 (Jan. 26, 1996).

[91] Ibid.

[92] Ibid., 1.

[93] See, e.g., *Rios v. Symington,* 833 P.2d 20 (Ariz. 1992). Applying the Supreme Court's definitions and principles from *Inter Faculty Organization* and *Johnson v. Carlson*, reduction of a previously enacted appropriation may be an item of appropriation subject to veto. Since such a provision (1) identifies a separate sum (i.e., the amount of the reduction) and (2) appropriates money in the state treasury to a specific purpose (i.e., it changes the permitted use of the money), it could be considered an item of appropriation. The court in *Johnson v. Carlson* made it clear that reducing spending was not a primary purpose of the provision, but rather providing an executive branch check on the legislative practice of including multiple items of appropriation in a single bill.

Appendix

Minnesota Governors' Exercise of the Item Veto Power

Governor	Session	Chapter number and items vetoed	Special Feature of Vetoes	Amount
J. A. A. Burnquist	1917	Chap. 440 – 1		$5,000
Theodore Christianson	1929	Chap. 221 – 6 Chap. 288 – 3	– reduced amount of one item	91,000 14,916,746
Karl Rolvaag	1965	Chap. 579 – 1 Chap. 902 – 1		400 301,000
Wendell Anderson	1971	Chap. 962 – 1		32,285
Albert Quie	1980	Chap. 607 – 2 Chap. 609 – 3 Chap. 614 – 10	– interfund transfer that did not authorize spending – statutory language	80,000 1,085,000 4,269,000
Rudy Perpich	1983 1987 1989 1990	Chap. 301 – 2 Chap. 403 – 1 Chap. 335 – 6 Chap. 565 – 1 Chap. 594 – 3	– restriction on appropriations – reductions in appropriations	522,000 NA (1,236,000) [i] (50,000) (708,000)
Arne Carlson	1991	Chap. 178 – 1 Chap. 179 – 2 Chap. 208 – 1 Chap. 233 – 11 Chap. 235 – 4 Chap. 254 – 3 Chap. 265 – 14 Chap. 270 – 1 Chap. 286 – 1 Chap. 291 – 2 Chap. 292 – 6 Chap. 298 – 1 Chap. 302 – 1 Chap. 345 – 24 Chap. 355 – 1 Chap. 356 – 9	– amounts contained only in working papers – new and existing statutory language selectively vetoed – restrictions on appropriations – aid formulas – appropriation in bill containing only one appropriation	50,000 10,000 15,000 2,896,000 1,135,000 260,000 28,333,000 214,000 130,000 1,500,000 0 [ii] 290,000 40,000 26,787,000 400,000 54,772,000
	1992	Chap. 449 – 1 Chap. 558 – 2		20,000 6,445,000
	1993	Chap. 172 – 4 Chap. 318 – 1 Chap. 369 – 4	– included "deposit" provision directing lottery funds to be deposited in account	980,000 open approp 2,710,000
	1993, 1st spec. sess.	Chap. 1 – 1		75,000

Minnesota Governors' Exercise of the Item Veto Power

Governor	Session	Chapter number and items vetoed	Special Feature of Vetoes	Amount
	1994	Chap. 532 – 9		$18,300,000[iii]
		Chap. 576 – 4		4,082,000
		Chap. 625 – 2	– included interfund transfer	15,264,000[iv]
		Chap. 632 – 29	– included change in state in-lieu payment rates for natural resource land	2,511,000[v]
		Chap. 635 – 4	– project mandates without funding	NA[vi]
		Chap. 636 – 17		2,701,000
		Chap. 640 – 2		5,750,000
		Chap. 642 – 7		8,650,000
	1995	Chap. 178 – 2		6,577,000
		Chap. 220 – 5		445,000
		Chap. 224 – 6	– restrictions on money not vetoed	1,947,000
		Chap. 226 – 6		1,445,000
		Chap. 234 – 2		800,000
		Chap. 254 – 1	– general reduction in overall appropriation with executive authority to distribute among individual items[vii]	(1,000,000)
		Chap. 265 – 1		250,000
	1996	Chap. 390 – 1		50,000
		Chap. 395 – 2		1,550,000
		Chap. 407 – 4		215,000
		Chap. 412 – 4		629,000
		Chap. 452 – 1		5,000
		Chap. 455 – 1		200,000
		Chap. 463 – 15		37,785,000
	1997	Chap. 183 – 1		100,000
		Chap. 200 – 1		1,410,000
		Chap 202 – 4	– increase in number of leadership positions in legislature	24,441,000
		Chap 203 – 1		218,000
	1998	Chap. 366 – 4		1,100,000
		Chap. 384 – 2		500,000
		Chap. 401 – 3		285,000
		Chap. 407 – 2		125,000
Jesse Ventura	1999	Chap. 45 – 1		245,000
		Chap. 205 – 5		425,000
		Chap. 214 – 2		450,000
		Chap. 216 - 1		500,000
		Chap. 223 – 4		1,152,000
		Chap. 231 – 8		4,381,000
		Chap. 238 – 1		6,000,000
		Chap. 240 – 7	– included veto of transfer to the transportation revolving loan fund and of bond reauthorizations to prevent cancellations	54,218,453
		Chap. 241 – 4		770,000

Minnesota Governors' Exercise of the Item Veto Power

Governor	Session	Chapter number and items vetoed	Special Feature of Vetoes	Amount
		Chap. 243 – 1 Chap. 245 – 2 Chap. 250 – 5	– transfer to health care access fund	$84,900,000 265,000 7,433,000
	2000	Chap. 479 – 1 Chap. 488 – 2 Chap. 492 – 8	– legislature overrode vetoes of four items appropriating $5,646,000	750,000 1,780,000 9,096,000
	2001	1st spec. sess: Chap. 2 – 3 Chap. 4 – 6 Chap. 8 – 1 Chap. 10 – 5 Chap. 12 – 1	 – included veto of change in permitted use of appropriation made in 2000 session, vetoed by governor, and overridden by legislature	 780,000 1,300,000 800,000 635,000 1,000,000
	2002	Chap. 393 – 107		356,723,000
Tim Pawlenty	2003	Chap. 128 – 1		200,000
	2004	Chap. 271 – 1		27,000
	2005	1st spec. sess: Chap. 1 – 20		10,507,000
	2006	Chap. 282 – 3		1,042,000
	2007	Chap. 45 – 2 Chap. 57 – 5 Chap. 135 – 9 Chap. 143 – 1 Chap. 144 – 2 Chap. 146 – 4 Chap. 147 – 9 Chap. 148 – 1		1,350,000 2,405,000 5,975,000 200,000 250,000 5,475,000 18,643,000 80,000
	2008	Chap. 179 – 55 Chap. 363 – 1	– included veto of change in permitted use of a 2006 session appropriation	220,513,000 150,000
	2009	Chap. 37 – 1 Chap. 78 – 6 Chap. 79 – 1 Chap. 93 – 12 Chap. 94 – 2 Chap. 95 – 3 Chap. 143 – 2		15,080,000 3,150,000 381,081,000 85,155,000 130,000 2,580,000 418,000
	2010	Chap. 189 – 52 Chap. 347 – 2	– included a veto of appropriation of taconite taxes expressed in cents per ton	367,960,000 2,823,644[viii]

Minnesota Governors' Exercise of the Item Veto Power

Governor	Session	Chapter number and items vetoed	Special Feature of Vetoes	Amount
		Chap. 361 – 3	– two vetoes related to provisions that raised revenues (by assessing public utilities) and authorized spending of that money; only the spending authorizations were vetoed	990,000
		Chap. 362 – 1		143,000
		Chap. 389 – 3		300,000
Mark Dayton	2013	Chap. 99 – 1		1,500,000
		Chap. 137 – 2		9,860,000
	2014	Chap. 293 – 1	– fee imposed by the bill to fund appropriation was not vetoed	open approp.

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Notes to Table

[i] This is a net figure. One item veto reduced spending by $2,000, while a second item veto eliminated a $1,238,000-decrease in spending authorization. In addition, three separate vetoes eliminated transfers between funds or accounts of $1,950,000.

[ii] Provisions vetoed in the bill contained no dollar amounts. Veto message specifically identified $855,000 of appropriations apparently from conference committee working papers (or "approximately $1 million") for fiscal year 1992-93.

[iii] Two of the vetoed provisions did not have specific dollar amounts assigned to them. In another instance, an appropriation was vetoed, but part of a rider, imposing a reporting requirement on the state board for community colleges, was not vetoed.

[iv] This included veto of a $15,064,000-interfund transfer from the health care access fund to the general fund. However, the veto did not veto the authorization to spend $4,579,000 of the money that was to be transferred for general assistance medical care grants. Thus, the net effect of the veto with regard to these moneys appears to have been to change the source of the appropriation from the general fund to the health care access fund.

[v] These vetoes included a veto of an increase in the maximum amount of ethanol grant payments from $10,000,000 to $20,000,000. This veto was not included in a total in the table, because the actual reduction in spending that resulted was not clear. The vetoes also included a change in the payment rates state in-lieu payments to counties for certain natural resource lands. This is an open and standing appropriation and the totals do not reflect increase in spending that would have resulted if these changes had gone into effect.

[vi] These were mandates to construct highway noise abatement projects. The governor's veto letter considered these to require appropriation of trunk highway funds and stated that the Department of Transportation indicated that they required $1,027,000 appropriation to fund. Letter from Governor Arne H. Carlson to Irv Anderson, Speaker of the House, *House Journal*, 78th sess., May 10, 1994, 8812.

[vii] This veto was invalidated by a court order. Two legislators, Representatives Phyllis Kahn and Tom Rukavina, brought suit challenging the validity of this veto. The Ramsey County District Court held that the bill's directive to the executive to reduce the overall appropriation for various function was not an item of appropriation that was subject to veto. In the court's view it did not authorize expenditure of money or encumber money in the state treasury and, thus, was not an item of appropriation. *Kahn v. Carlson*, Ramsey County District Court (January 26, 1996).

[viii] This amount includes a calculation of the amount of the veto of taconite production tax revenues ($823,644), expressed in the bill as 2.706 cents per ton. This calculation was based on the reported amount of 2010 taxable tonnage in Department of Revenue, Mining Tax Guide, p. 20 (November 2011).