

SUBJECT: Allowing the Legislature to override a veto after *sine die* adjournment

COMMITTEE: Government Reform — favorable, without amendment

VOTE: 5 ayes — Callegari, Pitts, Leibowitz, Miles, W. Smith

0 nays

2 absent — Berman, Rodriguez

WITNESSES: None

BACKGROUND: Texas Constitution, art. 4, sec. 14 requires the governor to sign or to forward a veto with objections to the house that originated a bill within 10 days (excluding Sundays) when the Legislature is in session. Otherwise, the bill becomes law without the governor's signature.

The Legislature can override a governor's veto by a two-thirds majority in both houses. Under the Constitution and legislative rules and precedent, the house in which the vetoed legislation originated votes first. The vote required for override in the originating house is two-thirds of the members present, while the vote required in the second house is two-thirds of the membership. To override line-item vetoes, the override vote is two-thirds of the members present in both houses.

For bills sent to the governor during the final 10 days, not counting Sundays, of a regular or special session or after *sine die* adjournment, the governor has 20 days, counting Sundays, after adjournment to veto a bill or a line item in the appropriations bill. If the Legislature has been called into special session and is meeting following the post-session veto deadline, it cannot vote to override the veto of a bill enacted during a previous session because the legislative process begins anew each session.

Veto overrides are relatively rare. According to the Legislative Research Library, the 13th Legislature in 1873 voted 16 times on bills vetoed by Gov. Edmund J. Davis, and incomplete records show that 13 vetoes were overridden. In 1941, the 47th Legislature voted 10 times to override vetoes by Gov. W. Lee O'Daniel.

The last time a veto was overridden was in 1979, when the 66th Legislature voted to override Gov. William Clements' veto of HB 2153 by Bock, allowing Comal County to block hunting and fishing regulations issued by the Texas Department of Parks and Wildlife. On May 17, 1979, the House by 90-42 and the Senate by 25-6 voted to override the veto, and the bill became law.

The last time the Legislature attempted to override a governor's veto was during the fifth called session of the 71st Legislature in 1990. The Senate by 23-8 voted to override Gov. Clements' veto of SB 1 by Parker, a school finance bill. The House by 92-55 did not reach the necessary majority to override, and the veto was sustained.

DIGEST:

HJR 59 would amend the Constitution to require the Legislature to convene after the 20-day post-session deadline for filing veto proclamations to reconsider vetoes by the governor. The period for reconsidering vetoes would begin at 10 a.m. on the day after the veto deadline and could not exceed more than three consecutive days. Unless the Legislature had been called into special session by the governor, it could not consider any subject except the reconsideration of vetoes of bills or vetoes of line items in the appropriations bill. During the reconsideration session, the Legislature could override the veto of a bill or appropriation line item that the governor had returned within three days before or anytime after *sine die* adjournment of a session.

The proposal would be presented to the voters at an election on Tuesday, November 6, 2007. The ballot proposal would read: "The constitutional amendment to allow the legislature to override a veto of the governor following a legislative session."

**SUPPORTERS
SAY:**

HJR 59 would grant the Legislature an opportunity to exercise its authority under the Constitution to reconsider legislation vetoed by the governor following *sine die* adjournment. Texas is one of 17 states where only the governor may call a special session, while the remaining 33 states permit either the governor or legislature to call a special or extraordinary session, which may include review of vetoed items. As such, the governor can kill measures approved by both chambers secure in the knowledge that the Legislature is powerless to challenge this decision. Providing this option to the Legislature would restore authority to enact laws to the people's representatives where it belongs and reinforce constitutional checks and balances. It makes little sense for the Legislature to have the

authority to override vetoes if it rarely has the opportunity to exercise that authority.

Rather than addressing contemporary debates between the governor and the Legislature, the proposed constitutional amendment would deal with general issues of accountability and balance of power. Existing constitutional requirements would remain unchanged, and overriding a veto still would be extremely difficult. The governor would retain the power to veto legislation, and the vote necessary to override a veto would remain a two-thirds majority in both chambers.

HJR 59 would not grant unreasonable powers to the Legislature. It would limit the length and scope of any veto session. Outside of a special session called by the governor, no other legislative business could be completed during a session to reconsider vetoes.

Increasingly, the Legislature must consider complex legislation for which it may be difficult to reach agreement until the very end of the session. HJR 59 effectively would give lawmakers additional time to complete that challenging task. Just as legislators could reach compromises and build alliances to override vetoes, the governor also would have the opportunity to reach agreement to block a veto from being overridden. All of this would be accomplished within the constitutional system of checks and balances.

Bills that survive the winnowing of the legislative process — only to be vetoed — should not have to wait until the next regular session for consideration. The same members who passed the original legislation should have the opportunity to address the veto.

The experience in Congress and in other states shows that veto overrides remain extremely rare. HJR 59 merely would grant Texas lawmakers the opportunity to “get into the game” with regard to challenging a governor’s veto.

Veto sessions are common practice in the rest of the country. Eleven states (Alaska, Connecticut, Hawaii, Louisiana, Missouri, Montana, New Jersey, North Carolina, Utah, Virginia, and Washington) have specific state constitutional provisions that allow the legislatures to reconvene after the normal session to consider bills vetoed by the governor. In addition, seven states (Florida, Georgia, Indiana, Mississippi, Nevada, Oregon, and South

Carolina) permit their legislatures to take up vetoed bills in subsequent regular or special sessions.

Changing the rules on considering legislation or extending the session still would require a constitutional amendment and would not resolve the problem of *sine die* vetoes. Some legislation always would be passed in the final 10 days of a session, irrespective of the session's length, allowing the governor to veto legislation after the Legislature has gone.

OPPONENTS
SAY:

The governor of Texas constitutionally has limited authority, and the ability to veto legislation after *sine die* adjournment and call special sessions are among the few strong powers of the office. HJR 59 further would weaken the office of the governor. Quarrels between legislators and governors can be resolved without amending the Constitution.

The Legislature could recapture its ability to respond to vetoes if it did not send all bills to the governor in the final 10 days of the session. During the 2003 regular session, the 78th Legislature enacted 1,028 out of 1,383 bills (74 percent) in the final 10 days, and the 79th Legislature sent 597 out of 1,389 (43 percent) to the governor in the final 10 days of the 2005 regular session. If the Legislature believes that a bill may be vetoed and a sufficient majority wants the opportunity to override, then it should enact the bill early enough to allow that vote to be taken.

OTHER
OPPONENTS
SAY:

HJR 59 would require the Legislature to convene for the limited purpose of overriding vetoes regardless of whether there was a need or desire to do so. It would require the Legislature to convene again after a session has adjourned *sine die* in order to vote on overriding vetoes even if the necessary majority did not desire to override. Even when the governor vetoes a bill early enough in a session to allow a vote to override, the Legislature rarely decides to vote on that issue. A more flexible alternative would be a constitutional amendment to change current limits on when non-emergency legislation can be considered to allow bills to reach the governor earlier in the regular session or to extend the number of days in a session, if needed, to override vetoes.

NOTES:

SJR 28 by Wentworth, the identical companion, has been referred to the Senate State Affairs Committee.

According to the Legislative Budget Board, the cost of a three-day special session would be between \$75,000 and \$100,000 in per diem for members and other incidental expenses.