

Voice from the Vault

By Gregory Sanford, State Archivist

Voting on Vetoes

After all these years I still find absolute delight in the unanticipated question, particularly those that challenge my own assumptions. For example, as the House prepared to vote on the governor's veto of S. 278, the campaign finance bill, we were asked whether speakers of the House had ever voted on overrides. The question was important because the vote was going to be close. Those who felt speakers couldn't vote pointed to House Rule 76, which restricted the speaker to voting "in cases of elections by ballot, or when the House is equally divided, or when the speaker's vote, if given to the minority, will make the division equal" (in which case the measure would be defeated). Those who supported the speaker voting noted Chapter II, Section 11 of the Vermont Constitution which said a vote of "two-thirds of the members present" was required to override a veto. "Members present" did not make an exception for the speaker, therefore the speaker should be counted among those voting.

My assumption, based on recent history, was that speakers had never voted on overrides. The Archives, of course, is based on records-based evidence, not assumptions, so I delved into previous veto votes. I was surprised to learn that initially speakers did vote. In 1839 the first veto vote, following adoption of the modern veto system in 1836, included the vote of the speaker. In the second veto vote (1845), which was also the first successful override, the speaker again participated. Indeed, as late as 1892 there was evidence that speakers even voted in roll call votes, regardless of whether it was a casting (tie-breaking) vote.

These discoveries answered the immediate question of whether speakers had ever voted on vetoes though, in some mythical free moment, this requires further research. When, and why, did speakers stop voting on vetoes and roll calls, for example? I suspect the answer lies in the

rules of order that underlie the rules of the house and senate, but that research must await another day.

Actually veto questions became quite frequent as the legislative session wound down. We received numerous inquiries about why the legislature upset its "tradition" by not including, as part of adjournment, a resolution providing for reconvening to address any vetoes. This question we were prepared for through one of our "continuing issue" web presentations <http://vermont-archives.org/govhistory/governance/Vetoes/vetoes.html>. The "tradition" of veto sessions only dates to 1995.

In 1994 Governor Howard Dean used the pocket veto on nine bills. A "pocket veto" is when a governor refuses to sign a bill received after the legislative adjourns. As a consequence the legislature lacks an opportunity to vote on overriding a pocket veto. In response to Governor Dean's use of the pocket veto the legislature adopted the practice of including, as part of adjournment, a resolution calling for reconvening to address any bills the governor vetoed following adjournment. First exercised in 2000, this practice eliminated the pocket veto. It says something about our awareness of the processes of self-government that within eight years we came to assume that veto sessions were a tradition.



Why did the 2008 session fail to include such a resolution? Various political motives were bandied about by pundits and politicians, but the truth of the matter is that vetoes are extremely hard to override. This also became a frequent question, though often couched in terms such as why the Democrats, with large legislative majorities, were unable to override any of Governor Douglas's vetoes. The 2007-2008 Legislature, however, is not the first general assembly to discover how difficult it is to achieve the two-thirds majority required for an override (or even, prior to 1913, when only a simple majority was required for an override). Since 1836 only six vetoes have been overridden; this

includes years when the Republicans held overwhelming legislative majorities (though often they were addressing vetoes by Republican governors).

The success of vetoes is all the more remarkable as they increasingly become a policy tool, rather than a response to "hasty" (poorly drafted) bills or bills that raised, in the eyes of a governor, constitutional issues. Initially, vetoes primarily addressed drafting flaws (Governor Douglas's veto of H. 203, relating to inheritances, on May 22nd fell within this category, noting that the bill inadvertently created a six month gap between the repeal of the existing law and the effective date of the new proposal). In 1869, for the first time, a governor cited a constitutional problem with legislation as a cause for a veto. Increasingly since the 1980s governors have used the veto against bills they have policy disagreements with. The use of the veto over policy differences explains, in part, why the veto has become more common. Governor Dean (1991-2003) holds the record with 21 vetoes. Governor Douglas (2003-) is second with, to date 13 vetoes, followed by Governors Snelling (1977-1985; 1991), Kunin (1985-1991) and Mead (1910-1912) with eight vetoes apiece (obviously lengthening gubernatorial tenures may

also play a role in how many vetoes a governor issues).

Over the past year I have increasingly used this column to address different aspects of archival management from the need to manage records throughout their life cycle (particularly in a digital world) to physical plant considerations. Reference is another core component of archival management. Within a public archives, reference is frequently shaped by the need to provide accessible information that can inform decision making. At a time, for example, when vetoes have become more important, it is useful to provide information on how the veto has evolved and how the legislature has responded. Our web presentation on the veto, as with other "continuing issues" on our web page <http://vermont-archives.org/govhistory/governance/index.htm>, provides one example of how we try to shape records and information into context for decision making.

After all these years, finding ways to unlock information so it can be used to inform policy remains my favorite aspect of archival management. With the launch of the new State Archives and Records Administration on July 1st we hope to develop additional ways to make information accessible to you.