

GUBERNATORIAL CREATIVE WRITING

CHANGING THE LEGISLATURE'S MIND

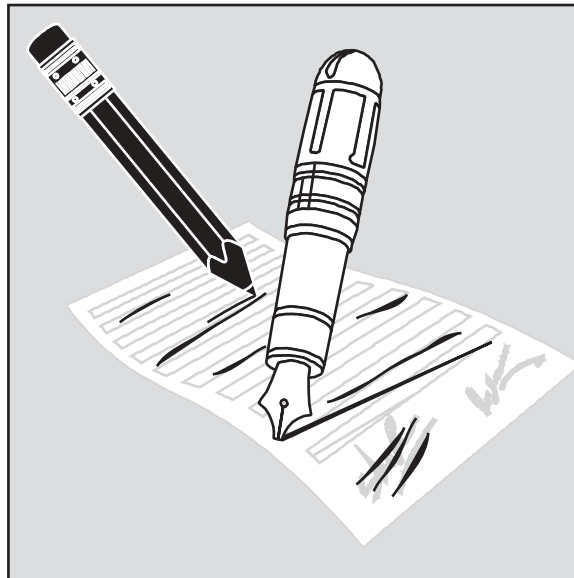
JEFF MAYERS

When then-Attorney General Jim Doyle ran for governor in 2002, he said: "I don't think you should be able to go in and take a word out there and a word out here and create a whole new sentence."

The first-term governor had a different view after using the partial veto power 139 times in July 2005, including rewrites that raised school aid spending by hundreds of millions of dollars via his Department of Administration (DOA) secretary. "Let's just say I see the world differently from the position I'm in right now," Doyle said.

Democrat Jim Doyle has learned a lot from Republican Tommy Thompson—including creating whole new sentences, and law—through the partial budget veto power while using the aura of the office to raise big money for re-election.

Thompson, the state's longest-serving governor, who often has clashed with Doyle, was the king of vetoes—and the king of fundraising. Thompson, governor from 1987 until February 1, 2001, made the partial budget veto power one of the most powerful in the country. Thompson set the records and established



the playbook for modern use of the veto pen, issuing 1,552 partial budget vetoes over his tenure and promoting his executive power to elevate his political status. Thompson's actions included a record 457 partial budget vetoes in the 1991-93 state budget sent to him by a Democratic legislature. That's in addition to the 126 bills Thompson vetoed in their entirety and the 124

non-budget bills he partially vetoed to his liking and then signed into law.

Not a single one of them was overridden—in fact a budget veto hasn't been overridden since 1985—the same year a non-budget partial veto by Democratic Governor Tony Earl was overridden by fellow majority Democrats in the Legislature. And Republicans, who fully control the Legislature now as Democrats did under Earl and in 1991 under Thompson, acknowledge it's unlikely any will be overridden this year. The Republican majorities simply aren't big enough to muster the two-thirds vote necessary in what would be a partisan fight and roll

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call. So as of this writing in early August, Republican legislative leaders were exploring a lawsuit and a constitutional fix—reminding Capitol observers of the Democratic complaints about Thompson and his use of the partial budget veto power back in the 1990s.

Doyle was reminded, too. “Let’s put this in perspective,” he said in the summer after Republican complaints about his “Frankenstein” vetoes. “These Republicans weren’t whining and complaining when it was a Republican governor who was doing it. Now they are when it’s a Democrat. That’s all this is about.”

But some Democrats complained, too, and suggested another constitutional fix may be in order. In April 1990, Democrats pushed through, and voters approved, a measure to correct what were dubbed “Vanna White vetoes” after the *Wheel of Fortune* star who revealed giant letters on stage as contestants guessed a word or phrase. The 1990 change made the constitution read:

In approving an appropriation bill in part, the governor may not create a new word by rejecting individual letters in the words of the enrolled bill.

That change was approved 387,068 to 252,481, a victory for Democrats trying to dent the “Thompson Teflon.” It didn’t matter in November. Thompson defeated the then-Assembly speaker from Sun Prairie, Tom Loftus, by a vote of 802,321 to 576,280.

All of this likely helped motivate Thompson to issue those record 457 partial budget vetoes less than a year later.

Governors Hold the Cards

A veto not overridden is new law and more power to the king. And when it comes to budget making, governors who use the power to the hilt hold practically all the cards. Governors and their administrations get to form the massive budget bill over months in secret. They get to parcel it out in pieces according to their own schedule and political liking, finally presenting it only after a big speech covered by the media.

Lawmakers, with the able assistance of their own budget analysis arm, the Legislative Fiscal Bureau then get only a few months to examine the bill and make changes—almost all of it on public display and while the governor dominates the bully pulpit.

Then, even after supposed “veto-proof” writing by legislative bill drafters and opposition pols, the governors and their administrations are able to partially veto the budget bill in secret once again, essentially rewriting the law given to them by lawmakers. Again, they have the ability to parcel out their decisions in pieces, holding news conferences and media events and sending their political message before delivering another big speech and dominating the stage upon delivery of the politically-tinged veto message.

Governors who do all of this right enhance their power and make the Legislature look weak and divided. And they tend to get re-elected.

Thompson, observers on both side of the political fence agree, did it right. Doyle is clearly following in Thompson’s footsteps.

It’s also instructive that about the time Doyle was putting together his veto message, his campaign was reporting a campaign war chest of \$3.5 million.

The Wisconsin Democracy Campaign, which tracks campaign fundraising, noted:

Gearing up for his reelection bid in 2006, Democratic Governor Jim Doyle held at least six fundraisers, including a pricey \$1,000-a-head golf outing, while his budget was in play. He raised a record \$1.44 million for a six-month budget period. His fundraising total was 2.5 times more than what he raised during consideration of the last state budget in the first half of 2003. Doyle’s fundraising put him well ahead of his Republican challengers: Mark Green and Scott Walker.

Doyle’s campaign largess dwarfed those of his two Republican rivals. The campaign of Congressman Mark Green, of Green Bay, reported \$1.7 million in the bank as of June 30.

Milwaukee County Executive Scott Walker's campaign reported \$502,513 in the bank.

Thompson and his team often said you win elections in the year before the ballots are cast. Doyle, again, is following the Thompson model.

Doyle Veto Debate Splits Old Thompson Team

But Thompson wasn't amused. In early August, WisPolitics.com learned that the former governor thinks Doyle crossed the line with his vetoes.

Thompson declined to comment directly, but a source who spoke to him said,

Governor Thompson believes what Doyle did is not at all comparable to his vetoes. Governor Thompson used his veto power appropriately to cut spending and never ever to increase spending. That's the primary difference in his mind.

But one of Thompson's old administration secretaries, Mark Bugher, said Doyle followed a well-beaten path.

"I think most governors like the strong veto authority we have in Wisconsin," Bugher told WisPolitics.com. "If a governor didn't go where Jim Doyle went, he definitely would have if he'd thought of it."

Bugher said the chance of a successful challenge is slim, as the veto powers have been supported by the courts. Essentially, the governor's veto is tantamount to a joint legislative action, he said.

"Governors, Republican and Democrat, will try and use the powers that are given them to their best advantage," said Bugher, who now directs the University Research Park in Madison.

When it comes to using the DOA secretary as a conduit, as Doyle did to funnel more money into school aids, the source that spoke with Tommy said, "(Thompson) said he never took authority away from the Legislature to give to a cabinet secretary through a veto."

Bugher doesn't think that segregated funds were ever used to fund a GPR appropriation

PARTIAL VETOES CONTAINED IN BIENNIAL BUDGET BILLS 1983 - 2005 SESSIONS

Session	Number of Partial Vetoes*	Vetoes Overridden
1983	70	6
1985	78	2
1987	290	0
1989	208	0
1991	457	0
1993	78	0
1995	112	0
1997	152	0
1999	255	0
2001	315	0
2003	131	0
2005	139	

* - As listed in each veto message by the governor
Source: Wisconsin Blue Book

under Thompson, as Doyle did by shifting Transportation Fund money to school aids. "But it was certainly done during the McCallum administration, which set the precedent, and it's a precedent the public seems to endorse," Bugher said.

"Frankly, Republican members of Legislature have endorsed it at a lower level," the former DOA secretary said of the transfer. "(Doyle) decided it was a better move than substantially cutting schools. It's hard for people to be critical of that. The degree of the transfer is the matter in question."

"Keep in mind someday there will be a Republican governor again, and you don't want to cut off your nose to spite your face," Bugher said.

Anatomy of a Veto

Doyle's stamp on veto history may be the school aid vetoes, which essentially restored the two-thirds funding of kindergarten-through-12th-grade schools that the

Republican-run legislature had rejected. Republicans approved a big school aid increase, but Doyle wanted the two-thirds level to enhance his "education governor" status and to work with his adapted Republican freeze plan to hold down property taxes this December in advance of his November 2006 reelection bid.

Fred Wade, a Madison attorney who helped Democrats with their "Vanna White veto" fix 15 years ago, wrote a WisOpinion.com piece entitled: "Ten Reasons Why Key Doyle Vetoes are Unconstitutional."

In it, he examines the most controversial Doyle vetoes.

In section 9148 of the 2005-07 state budget (2005 Act 25), the Governor fabricated a new sentence from assorted words, digits and punctuation marks that remained after he vetoed other words, digits and punctuation marks.

The new sentence reads, "The Department of Transportation shall transfer to the general fund from the transportation fund in the 2005-07 fiscal biennium, \$427,000,000."

In section 9155, the Governor cobbled together a new sentence that reads, "The secretary of administration shall transfer from the balances of the general fund an amount equal to \$330,000,000 during the 2005-06 fiscal year and the 2006-07 fiscal year to any appropriation under section 20.255 of the statutes," which contains various appropriations for the Department of Public Instruction.

Even more astonishing, in section 9255 of the bill, the Governor manufactured a new sentence that reads, "The secretary of administration may transfer moneys to any appropriation account or fund from the general fund."

Doyle, his administration secretary, Marc Marotta, and other administration officials say they've done nothing that Thompson and other governors haven't done. They say the courts back them up. But Wade concluded that the practice is "plainly unconstitutional," asserting,

There is no support in the text, structure, history or design of the Wisconsin Constitution for the extraordinary proposition that governors may use vetoes of words, digits and punctuation marks to create items of legislation, or appropriations of money, that the Legislature did not authorize.

Proposed Constitutional Change Pending

In early August, Republican legislative leaders mulled a lawsuit and moved forward on plan to advance a proposed constitutional amendment to voters. Unlike the 1990 experience, however, this one won't be able to be on the ballot before Doyle's reelection bid, as proposed amendments must be approved by two consecutive legislatures. The current two-year session ends in 2006, and a new Wisconsin Legislature is seated in January 2007.

State Senator Sheila Harsdorf (R-River Falls) and three Republican colleagues (Senator Scott Fitzgerald, co-chairman of the budget-writing Joint Finance Committee (JFC) from Juneau, and state Representatives Jeff Stone, R-Greendale, another JFC member, and Don Friske, R-Merrill) propose an amendment that would prohibit a governor from creating a new sentence by combining parts of two or more sentences. "Governor Doyle has perfected the art of the 'Frankenstein Veto' to create new sentences by stitching together words from other sentences. It is important to protect against such abusive partial vetoes," said Harsdorf, pointing to the school aids veto as the primary example. A press release said:

In just one example, Governor Doyle partially vetoed 752 words out of 4 subsections of the state budget to obtain a 20 word sentence, which in turn transfers \$427 million from the transportation budget to the general fund to increase spending. Doyle literally stitched together one sentence from pages in the budget to create a new appropriation.

If the proposed amendment were approved, the constitution would read:

In approving an appropriation bill in part, the governor may not create a new word

by rejecting individual letters in the words of the enrolled bill, and may not create a new sentence by combining parts of 2 or more sentences of the enrolled bill.

Republican leaders said they hoped for bipartisan support, and in the end, they may get it, and voters may approve another curtailment of the governor's partial veto power.

But history says it's unlikely to curb the political benefits that accrue to governors who aggressively and skillfully use the budget process and the veto pen.