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# ASSESSING A POTENTIAL DEVIATION IN THE LEGISLATIVE PROCESS: THE USE OF VEHICLE BILLS IN SOUTH DAKOTA

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*Vehicle bills are used by many state legislatures, including the South Dakota Legislature. These bills serve as empty shells to be amended with substantive text later in the legislative session. Critics charge that such vehicles allow legislators to meet the filing deadline with an essentially meaningless bill that gets amended late in the session, thereby depriving the public and opposition legislators from adequately investigating and debating the newly amended bill. This article examines how, and to what extent, the South Dakota Legislature has used vehicle bills over the past decade. In so doing, the article may provide some insight into how the use of these vehicle bills can affect the legislative process and its advancement of republican and democratic values.*

## I. INTRODUCTION

The term “vehicle bill” refers to a type of bill introduced during a state legislative session that, at the time of introduction, has no substantive provisions.<sup>1</sup> Instead, they often include one sentence of general text vaguely related to a broadly titled bill.<sup>2</sup> As such, having met the filing deadline, they serve as a kind of legislative placeholder, which can be later amended at any point during the legislative session.<sup>3</sup> They are “vehicles” in the sense that they keep a policy discussion alive across procedural deadlines for bill introduction or passage in the

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1. Marcia J. Oddi, *Analysis of Another Effort to Alter Indiana Judicial Selection and Retention Process*, 49 RES GESTAE 32, 32 (2006).

2. Vehicle bills possess no meaningful content; they act as something to be later amended at the desire of legislative leadership. *Id.*

3. Lisa Kaczke, *Halfway Through the Legislative Session, One in Ten South Dakota Bills are Empty Shells*, ARGUS LEADER (Feb. 8, 2019), <https://perma.cc/WMB3-VQMP>.

house of origin without achieving substantive resolution. They are simply “vehicles” to keep the debate alive and with which to effectuate an eventual legislative resolution.

Being devoid of meaningful content, vehicle bills can serve as “devices to refer legislation to a conference committee” for actual drafting.<sup>4</sup> They may also allow behind-the-scenes, indeterminate, and ongoing negotiation among legislators about controversial or consequential policy questions that take longer to resolve. Having a variety of vehicle bills on a topic late in a legislative session can give one house negotiating power over the other by providing leverage and initiative key questions remaining before the legislature. Because these bills lack substantive details, with specific text being added later, the public may not know what the vehicle bill is about when it is introduced or even until after it is passed.<sup>5</sup>

The titles of vehicle bills are as vague as the abbreviated text of the bills, relating to topics of predictable legislative action, such as school funding, economic development, or criminal justice.<sup>6</sup> In some instances, titles may be so vague as to be capable of later accommodating almost any topic.<sup>7</sup>

One justification given for vehicle bills is that it affords the legislature the flexibility to later deal with unexpected needs that might arise after the filing deadline for bills has passed.<sup>8</sup> They can also provide a way to address appropriations or comprehensive policy questions that can only be resolved near the end of the legislative session rather than introducing bills that include artificially detailed substance that will only require amendment in the end.

Vehicle bills can have utility, but they can also be sources of procedural abuse. They can distort the legislative process by short-circuiting deliberation, avoiding public scrutiny, or skewing the will of the majority.<sup>9</sup> The use and impact of vehicle bills in South Dakota will be examined in this article. The first section is a brief summary of how the legislative process should ideally function.<sup>10</sup> The second section then examines the use of vehicle bills in South Dakota over the last eleven years.<sup>11</sup>

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4. Andrew P. Miller & Mark A. Packman, *The Constitutionality of Political Gerrymandering*, 4 J.L. & POL. 697, 704 (1988).

5. Kaczke, *supra* note 3.

6. *See id.*

7. South Dakota allows amendments to bills so long as they are germane to the title. S.D. LEGIS. RSCH. COUNCIL, LEGISLATOR REFERENCE BOOK 98 (2018). A broad title such as “An Act to address school funding and regulation” will be receptive to such a broad collection of substantive provisions as to border on unlimited. While such titles will discharge their notice function at a level of great generality, their breadth and the vague text of most vehicle bills can fall far short of providing meaningful public notice.

8. Kaczke, *supra* note 3.

9. *Id.*

10. *See infra* Part II (summarizing the legislative process).

11. *See infra* Part III (discussing the use of vehicle bills in South Dakota).

## II. THE LEGISLATIVE PROCESS

### A. VALUES UNDERLYING THE LEGISLATIVE PROCESS

Vehicle bills deviate from typical legislation. Typical legislation lays out specific details and generates substantive debate on potential amendments, approval, and rejection. Vehicle bills are more ideas than substantive legislative proposals during much of their lives. Therefore, to assess the impact of vehicle bills, it is first necessary to consider briefly the underlying values that animate the legislative process.

The legislative process serves important needs for American society. It constitutes the avenue through which policies of significant concern to citizens are addressed at both the national and state levels. Congress regulates daily activities like banking, transportation, healthcare, and other major aspects of American life. State legislatures often regulate these areas in parallel with Congress, as well as other areas particular to their jurisdiction such as professional licensure, family law, and school funding. In short, Congress and state legislatures set a vast array of rules that govern the diverse and complex life in America.

Given the importance of substantive law to the conduct of American society, the processes that produce it should be fair, effective, and reflective of fundamental political values. Although not exhaustive, those values can be generalized as the democratic and republican values underlying the American constitutional system.

The legislative process advances democratic values in multiple ways.<sup>12</sup> Legislatures serve democratic values by implementing policies preferred by a majority of the citizens. Legislatures do this through their composition of legislators democratically elected by a majority of citizens within various geographic districts.<sup>13</sup> With their democratically determined composition, legislatures reflect the will of the nation or state as a whole when they decide on particular policies, each decision based on a majority vote of legislators.<sup>14</sup> However, legislators can only represent the broader public will if those legislators act on individual policies on which each legislator can discern the opinion of the

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12. Both Congress and state legislatures structure their composition to be responsive and deliberative to different degrees. They are also structured to reflect interests of different groups within the geographic allocation of representation. *See Legislative Power*, PRINCIPLES OF DEMOCRACY, <https://perma.cc/9UL9-TNWR> (last visited Jan. 29, 2024) (explaining how “[l]egislators may support the government in power or they may serve as a loyal political opposition that offers alternative policies and programs”).

13. *See Roles and Responsibilities of Local Government Leaders*, MRSC, <https://perma.cc/92YC-XNV9> (last visited Jan. 29, 2024) (describing the American legislative system and how elected legislators “search for compromises acceptable to the majority”).

14. *See id.* In some instances, legislative action may even require a supermajority for action on important questions. Although beyond the scope of this article, supermajority requirements can become anti-democratic by allowing an intransigent minority to stymie the will of the majority. *See e.g.*, Neil Fulton, *What Comes Next?*, 62 WASHBURN L.J. 189, 203-04 (2023) (describing counter-majoritarian limits on legislative action).

majority of their constituents; correspondingly, constituents can then reward or punish those legislators who do or fail to do the will of the public.<sup>15</sup>

The legislative process also advances republican values through its structure.<sup>16</sup> Ideally, legislative proposals are debated publicly and with the opportunity for input from citizens, experts, and interest groups.<sup>17</sup> Legislators can debate and deliberate on the input received, consider possible courses of action, and then act in accordance with their view of the common good.<sup>18</sup> This process both reflects and advances republican values of deliberation and representation.<sup>19</sup>

Because of their nature and design, vehicle bills threaten to distort the legislative process and frustrate these values. This article next turns to a consideration of the unique aspects of the South Dakota legislative process that facilitates the use of vehicle bills.

## B. UNIQUE ASPECTS OF THE SOUTH DAKOTA LEGISLATIVE PROCESS

While many similarities exist in how Congress and state legislatures advance democratic and republican values, significant differences nonetheless remain. South Dakota, like many state legislatures, uses processes distinct from those used in Congress. Those differences can cut both ways as to the advancement of underlying political values. For instance, unlike Congress, all bills introduced in the South Dakota Legislature receive consideration on the merits.<sup>20</sup> Therefore, no committee chair may deny a hearing on a bill.<sup>21</sup> This advances republican values by facilitating deliberation on all topics of concern to legislators, even a lone sponsor, not just on those topics favored by legislative leadership. This also advances democratic values by giving all policy proposals a definitive disposition that reflects the will of the majority, not simply the policy or political preferences of the minority of legislators in leadership positions.

Many state legislatures, including South Dakota, impose single-subject requirements on legislation.<sup>22</sup> While the scope of a “single subject” can be quite broad, these rules avoid situations where legislative proposals not preferred by a majority are implemented simply by being paired with other more popular

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15. See Jonathan S. Gould, *The Law of Legislative Representation*, 107 VA. L. REV. 765, 770, 776-79 (2021) (analyzing, among other things, how constituents “have the ability to reward or punish legislators”).

16. See THE FEDERALIST NO. 39 (James Madison) (illustrating the importance of a republican form of government for the foundation and structure of American democracy).

17. See generally *The Legislative Process*, U.S. HOUSE OF REPRESENTATIVES, <https://perma.cc/P558-PGQE> (last visited Jan. 29, 2024) (outlining the legislative process).

18. See *id.*

19. *Id.*; see Gordon S. Wood, *Classical Republicanism and the American Revolution*, 66 CHI.-KENT L. REV. 13, 19-20 (1990) (illustrating the values of republicanism).

20. Under the Joint Rules of the Legislature, every bill in South Dakota receives a hearing. See J. Rules, S.D. LEGISL., 7-1.2, 7-1.6, and 7-1.8 [<https://perma.cc/R4U6-7NZ9>].

21. *Id.*

22. Richard Briffault, *The Single-Subject Rule: A State Constitutional Dilemma*, 82 ALB. L. REV. 1629, 1629 (2019) (“Forty-three state constitutions include some sort of ‘single-subject’ rule, that is, the requirement that each act of the legislature be limited to a single subject.”).

proposals.<sup>23</sup> These single-subject rules advance republican values by ensuring that the debate over legislation remains germane to the topic under consideration. These rules also do so by keeping debate and disposition dependent on the merits rather than on logrolling or other political machinations.<sup>24</sup>

Time-limited legislative sessions also advance democratic and republican values. Requiring all legislative business to be completed within a fixed term forces the legislature to debate proposals in a timely fashion. Imposing deadlines for bill introductions and final action in the house of origin helps ensure that legislative action takes place timely, with public knowledge of its proceedings, and with compelled deliberation and disposition. These requirements facilitate republican values by ensuring that the legislature does in fact deliberate policy proposals and facilitate democratic values by forcing final action in accordance with the will of the majority.

While many of the unique rules of state legislatures may advance democratic and republican values, not everything about the state legislative process may serve those values. Many states, including South Dakota, have an established practice of considering vehicle bills.<sup>25</sup> Although South Dakota requires all bills to receive consideration and action, it does not require those bills to have substance when they are debated and acted upon. Moreover, the deadlines for bill introduction and action in the house of origin do not prohibit the introduction and consideration of placeholder vehicles.<sup>26</sup> While bills must have single subjects, those subjects can be quite broad and can facilitate wholesale amendment while remaining germane to a broad title.<sup>27</sup> As a result, vehicle bills are subject to criticism of how they may actually frustrate democratic and republican values.

### C. CRITICISMS OF VEHICLE BILLS

Vehicle bills may provide a way to short-circuit the stronger democratic and republican aspects of the South Dakota legislative process. Open-ended bill shells that can later be filled with substantive provisions may foster deliberation that largely takes place behind closed doors, circumventing the republican aspects of the legislative process. These bills may also undercut the democratic process by allowing leaders to negotiate the substance of certain key provisions rather than receiving meaningful deliberative consideration by the whole legislature. Moreover, if substantive amendments to bills are presented in the waning days of the legislative session, acute pressures of time and available financial resources can allow legislative leaders to exert greater control over debate and actually discourage meaningful deliberation. Key vehicle bills can become “take it or leave it” proposals, with deliberation suppressed and democratic impulses compromised

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23. *Id.* at 1634.

24. *Id.*

25. CATHERINE O’NEAL, FIFTY STATE SURVEY: STRIKE EVERYTHING AMENDMENTS AND VEHICLE BILLS 91 (1990).

26. *99th South Dakota Legislative Session Calendar*, S.D. LEGISL. RSRCH. COUNCIL (Mar. 3, 2023), <https://perma.cc/V9X2-NGDM>.

27. S.D. CONST. art. III, § 21.

as legislators face the reality that something needs to be done and that this may be the only thing that can be done under the circumstances.

A counterargument is that the subjects of many vehicle bills are the most significant topics of a particular legislative session that receive ongoing deliberative consideration. The bill itself, and the apparently limited process of amendment, may mask ongoing give and take among legislators, lobbyists, the executive branch, and the public that shapes the final form of the bill's substance. It is a debatable question of whether debate and deliberation must take place within formal channels to truly advance democratic and republican values of majority will and deliberation. How one resolves that question may dictate what one thinks about the positive or negative impact of vehicle bills.

Critics charge that vehicle bills suffer from a lack of transparency and prevent the public from understanding, in a timely fashion, the ultimate impact of the bill.<sup>28</sup> Because of this lack of understanding, the general public, and particularly opponents of a bill, cannot adequately voice their concerns or opposition. Some critics claim that vehicle bills are meant to “fool the press and others.”<sup>29</sup> Even though state legislatures generally require germane amendments to vehicle bills, germaneness is often determined very liberally.<sup>30</sup>

Vehicle bills attracted criticism in a United States Supreme Court dissent.<sup>31</sup> Justice Lewis Powell objected to a reapportionment bill passed through a vehicle bill process because a committee made up entirely of legislators from one political party drafted the bill.<sup>32</sup> This process, according to critics, was not an open process.<sup>33</sup> Because of the last-minute passage of the bill, the public had little opportunity to review it; indeed, the minority political party had only forty hours to study the bill as reported by the conference committee.<sup>34</sup>

These criticisms reflect the potential negative impacts of vehicle bills on democratic and republican values. Indeed, when those values are considered, the possible adverse effects of vehicle bills, at least in theory, seem somewhat obvious. But to go beyond theory, it is necessary to examine how the South Dakota Legislature has used vehicle bills over time.<sup>35</sup>

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28. *Id.*

29. O'NEAL, *supra* note 25, at 91.

30. *Id.* at 18-20. In South Dakota, Rule 5-17.2 of the Joint Rules of Legislature requires amendment to be germane to the title and subject of the bill. And Article III, Section 21 of the State Constitution requires that each bill have only one subject, which shall be expressed in the title.

31. See *Davis v. Bandemer*, 478 U.S. 109, 169 (1986) (Powell, J., concurring in part and dissenting in part).

32. *Id.* at 175.

33. Easha Anand, *Finding a Path Through the Political Thicket: In Defense of Partisan Gerrymandering's Justiciability*, 102 CAL. L. REV. 917, 939-40 (2014); see also Evan Geldzahler, *Davis v. Bandemer: Remedial Difficulties in Political Gerrymandering*, 37 EMORY L.J. 443, 447 (1988) (stating that the conference committee charged with drafting the bill was composed entirely of Republican legislators).

34. *Davis*, 478 U.S. at 176 (Powell, J., concurring in part and dissenting in part).

35. A bill is categorized as a “vehicle bill” if it is apparent at the time of introduction that an amendment would be needed to the bill before passage into law; generally, a “classic” vehicle bill has a very general title with minimal text. Vehicle bills can also be appropriation bills where the text is clear regarding the intent of the bill (e.g., where the funds are intended to be appropriated to), but the dollar

### III. THE USE OF VEHICLE BILLS IN SOUTH DAKOTA

#### A. AN EXPLANATION OF THE DATA CATEGORIES

The present study examined eleven years of vehicle bill usage in South Dakota.<sup>36</sup> The tables below list thirteen categories of data collected. Appendix A provides a summary of legislative action regarding vehicle bills from 2013 to 2023. Row A lists the total number of vehicle bills introduced that year, with Row B specifying the number of those bills that were passed into law. Row C notes the percentage of vehicle bills introduced which passed.

Appendix B summarizes the data between vehicle bills and committee hearings. Rows D through G contain information regarding the number of hearings that the vehicle bills received. Row D provides the number of bills withdrawn before ever having a hearing. Row E identifies the number of bills that received a committee hearing in just one of the two chambers of the South Dakota Legislature. This row lists only those bills that received a hearing in only one chamber; if a bill received a hearing in both chambers, it is not counted in Row E. Row F then provides the number of bills that received a committee hearing in both chambers, the House and Senate. Row G lists the number of bills that received a committee hearing in both chambers *and* a conference committee hearing or joint appropriations committee hearing.

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amount is indicated as \$1. Thus, an amendment is needed to indicate the amount. Thus, in South Dakota, not all vehicle bills are those where the introduced text is deleted and completely replaced before passage. Moreover, vehicle bills in South Dakota may also reflect legislator work management more than anything else. Prior to the legislative session, for whatever reason, details of proposed legislation may not yet have been worked out. A legislator may want to propose something, but they need the time and negotiation opportunities during the session to determine the ultimate content of the bill. Examples of vehicle bills demonstrate the general yet empty nature of the text. “Insurance is hereby affected.” S.B. 99 (2014). “The Legislature shall pursue opportunities to enhance the state.” H.B. 1115 (2017). “In case of a title affecting interest rates in this state is needed to accommodate the legislative process, this bill is being introduced to accomplish that purpose.” H.B. 1175 (2017).

Vehicle bills are different from “hoghouse” bills. In South Dakota, a “hoghouse” is an amendment to a substantive bill that replaces everything after the enacting clause. Such an amendment is called a “hoghouse” because the technique was first used to authorize construction of a swine facility at an agricultural college in Brookings, South Dakota. Hoghouse bills are defined as “a procedure used in the Legislature whereby a committee or a member from the floor will move to strike everything after the enacting clause of a bill and insert in lieu thereof the substance of an entirely new bill.” S.D. LEGIS. RSCH. COUNCIL, LEGISLATOR REFERENCE BOOK 41 (2018). A vehicle bill is a blank slate to which substance is added later. A hoghouse is a wholesale replacement of substance with different substance. Telephone Interview with John McCullough, Chief Research and Legal Analyst, Legislative Research Council (Sept. 7, 2023).

36. This study has consulted the introduced and enacted laws referenced in the Legislative Research Council’s category of “vehicle and hoghouse” bills. The study then separated out the hoghouse bills and used only the vehicle bills as data points. The year 2020 presents a bit of a quandary. For that year, and that year only, the Legislative Research Council subject categorization used the subject heading “Hoghouse” instead of “Hoghouse Vehicle” on their website. An examination of all nineteen bills classified under that category found that only three bills were vehicle bills. Because this was a particularly low number of vehicle bills, especially in comparison with the previous year of 2019, this study then examined every bill introduced in 2020, which included 298 House bills and 194 Senate bills, along with a total of 104 resolutions and commemorations of various types. This examination found a total of 30 vehicle bills introduced in the 2020 session.



Appendix C deals with amendments to the vehicle bills. Row H, considering all vehicle bills introduced that year and all amendments to those bills, gives the average number of amendments offered to each vehicle bill. Row I then provides the average number of amendments offered to just those vehicle bills that passed into law. Row J lists the average number of versions of each vehicle bill introduced. Row K gives the average number of days transpiring between the last amendment of a vehicle bill and its passage into law. This row deals only with vehicle bills that became law. Row L provides the number of vehicle bills that were passed into law less than two days after the last amendment.

Appendix D provides a summary of vehicle bills and leadership sponsorship. Row M summarizes the number of bills sponsored by legislative leadership. Row N provides the percentage of introduced bills sponsored by legislative leadership. Row O details the number of passed bills sponsored by legislative leadership. Row P provides the percentage of passed bills sponsored by legislative leadership.

## B. A SUMMARY OF THE DATA

As the data below demonstrates, the use of vehicle bills in South Dakota has declined after hitting a peak in 2019. Moreover, in recent years, only about twelve percent of the vehicle bills introduced have become law.<sup>37</sup>

A spike in 2019 appears to be an anomaly in vehicle bill usage in South Dakota. Forty-six vehicle bills were introduced in 2019—the highest number in all the years studied. There were thirty-seven vehicle bills introduced in 2021, thirty-two in 2022, and thirty in 2020, but in 2023, the number of vehicle bills introduced was only seventeen, returning to a level more similar to that seen in the years prior to 2019.

Contrary to some general criticisms of vehicle bills, in South Dakota, such bills mostly receive substantive hearings. In 2023, all vehicle bills received at least one hearing, with many getting consideration in both legislative houses. Nearly a third of the bills received a committee hearing in both chambers, along with a conference committee hearing.

The data reveals that vehicle bills in South Dakota do not receive large numbers of amendments. Since 2013, each vehicle bill was amended just over

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37. Since 2013, the vehicle bills passed into law in South Dakota are as follows: SB. 113, 2023 Leg., 98<sup>th</sup> Sess. (S.D. 2023); S.B. 168, 2023 Leg., 98<sup>th</sup> Sess. (S.D. 2023); H.B. 1127, 2022 Leg., 97<sup>th</sup> Sess. (S.D. 2022); H.B. 1328, 2022 Leg., 97<sup>th</sup> Sess. (S.D. 2022); S.B. 161, 2022 Leg., 97<sup>th</sup> Sess. (S.D. 2022); H.B. 1166, 2021 Leg., 96<sup>th</sup> Sess. (S.D. 2021); H.B. 1169, 2021 Leg., 96<sup>th</sup> Sess. (S.D. 2021); H.B. 1171, 2021 Leg., 96<sup>th</sup> Sess. (S.D. 2021); H.B. 1262, 2021 Leg., 96<sup>th</sup> Sess. (S.D. 2021); H.B. 1187, 2020 Leg., 95<sup>th</sup> Sess. (S.D. 2020); H.B. 1189, 2020 Leg., 95<sup>th</sup> Sess. (S.D. 2020); H.B. 1084, 2019 Leg., 94<sup>th</sup> Sess. (S.D. 2019); H.B. 1093, 2019 Leg., 94<sup>th</sup> Sess. (S.D. 2019); H.B. 1094, 2019 Leg., 94<sup>th</sup> Sess. (S.D. 2019); H.B. 1209, 2019 Leg., 94<sup>th</sup> Sess. (S.D. 2019); H.B. 1219, 2019 Leg., 94<sup>th</sup> Sess. (S.D. 2019); S.B. 167, 2019 Leg., 94<sup>th</sup> Sess. (S.D. 2019); H.B. 1285, 2018 Leg., 93<sup>rd</sup> Sess. (S.D. 2018); S.B. 187, 2018 Leg., 93<sup>rd</sup> Sess. (S.D. 2018); S.B. 176, 2017 Leg., 92<sup>nd</sup> Sess. (S.D. 2017); H.B. 1145, 2016 Leg., 91<sup>st</sup> Sess. (S.D. 2016); H.B. 1153, 2016 Leg., 91<sup>st</sup> Sess. (S.D. 2016); H.B. 1228, 2015 Leg., 90<sup>th</sup> Sess. (S.D. 2015); S.B. 134, 2015 Leg., 90<sup>th</sup> Sess. (S.D. 2015); H.B. 1203, 2014 Leg., 89<sup>th</sup> Sess. (S.D. 2014); S.B. 99, 2014 Leg., 89<sup>th</sup> Sess. (S.D. 2014); S.B. 108, 2014 Leg., 89<sup>th</sup> Sess. (S.D. 2014); S.B. 168, 2014 Leg., 89<sup>th</sup> Sess. (S.D. 2014); H.B. 1137, 2013 Leg., 88<sup>th</sup> Sess. (S.D. 2013); S.B. 235, 2013 Leg., 88<sup>th</sup> Sess. (S.D. 2013); S.B. 237, 2013 Leg., 88<sup>th</sup> Sess. (S.D. 2013).

once on average. By their very nature, vehicle bills require at least one amendment to provide meaningful text to the bill. However, the number of amendments increases when considering only those vehicle bills that became law. Aside from 2017 when the enacted vehicle bill had eleven amendments, the average number of amendments attached to enacted vehicle bills was five or less.

An important characteristic of vehicle bills in South Dakota is the time period between final amendment and passage. Contrary to fears that vehicle bills are amended immediately before final passage or at the very end of the legislative session, thereby depriving opponents of the ability to scrutinize and debate the bill, the data shows that since 2017, on average, approximately a week or two separates final amendment and final passage. Perhaps a more telling indication of whether vehicle bills are being used to pass laws without adequate time to deliberate on and debate those bills is the number of such bills enacted less than two days after the final amendment of those bills. Since 2017, only one such bill has been enacted—in 2023.<sup>38</sup>

Another fear surrounding vehicle bills is that such bills become tools of the legislative leadership to push through legislation late in the session. Indeed, the present study found a noticeable correlation between legislative leadership sponsorship and the passage of vehicle bills.<sup>39</sup> In 2022 and 2023, one hundred percent of the vehicle bills passed into law were sponsored by a member of the legislative leadership.<sup>40</sup> In 2022, only thirty-four percent of the vehicle bills were introduced by legislative leadership, but one hundred percent of the passed bills had leadership sponsorship.<sup>41</sup> On the other hand, in 2017, eighty-one percent of the introduced bills were sponsored by leadership, but none of the passed bills had

38. SB. 113, 2023 Leg., 98<sup>th</sup> Sess. (S.D. 2023).

39. See *infra* Appendix D. For all vehicle bills *introduced*, the percentage of which that had at least one sponsor in legislative leadership (either majority or minority) is shown as follows by year: 2023 – 65%; 2022 – 34%; 2021 – 43%; 2020 – 53%; 2019 – 52%; 2018 – 44%; 2017 – 81%; 2016 – 70%; 2015 – 93%; 2014 – 88%; 2013 – 84%.

For all vehicle bills *passed*, the percentage of which that had a least one sponsor in legislative leadership (either majority or minority) is shown as follows by year:

2023 – 100%; 2022 – 100%; 2021 – 25%; 2020 – 100%; 2019 – 50%; 2018 – 50%; 2017 – 0%; 2016 – 100%; 2015 – 100%; 2014 – 75%; 2013 – 100%.

Legislative leadership was defined to include: Speaker of the House, Speaker Pro Tempore, House Majority Leader, House Assistant Majority Leader, House Majority Whips, House Minority Leader, House Assistant Minority Leader, House Minority Whips, President Pro Tempore, Senate Majority Leader, Senate Assistant Majority Leader, Senate Majority Whips, Senate Minority Leader, Senate Assistant Minority Leader, and Senate Minority Whips.

NOTE: Some bills were introduced by a standing committee or by a standing committee on behalf of another person or entity, such as the Governor or Board of Regents. These bills were NOT considered as introduced by legislative leadership. See *supra* note 37. See generally *Archived Sessions*, S.D. LEGIS. RSRCH. COUNCIL, <https://perma.cc/9BGN-XN2A> (providing a list of each legislative session's Hoghouse-Vehicle bills under its subject index and listing individual bill sponsors).

40. See *infra* Appendix D; see also, e.g., *Legislative Leadership: 2023-2024 Legislative Term*, LEGIS. RSRCH. COUNCIL, <https://perma.cc/8U5V-FE48> (listing the leadership within the South Dakota Legislature).

41. See *supra* text accompanying note 39.

such leadership.<sup>42</sup> This suggests that legislative leadership may have somewhat lost control of the process in those years.

Although this data does not produce any definite conclusions, it does reveal that, in general, a vehicle bill passed into law is more likely to have been sponsored by a member of the legislative leadership.

Finally, the study attempted to determine if vehicle bills tended to focus on particular subject matter areas. Perhaps not surprising, the most frequent use of vehicle bills occurred in the area of appropriations. Nine vehicle bills in the past eleven years involved appropriations, which amounts to an average of just less than one per year.<sup>43</sup> Seven bills involved the Emergency Clause, and five covered the areas of state government, followed by education and public health with four each.<sup>44</sup> After that, the numbers show that the subject areas of vehicle bills are spread out along a wide spectrum.<sup>45</sup>

#### IV. CONCLUSION

The use of vehicle bills has attracted significant criticism, primarily because of the way such bills can distort the legislative process away from the intended purposes and functions of that process. But because of the varying rules and practices of state legislatures across the country, the use of vehicle bills can also vary significantly.

The present study sought to examine vehicle bill usage within the South Dakota Legislature. While not exhaustive, the study indicates that such usage may not involve the kind of concerns or abuses that have led to the widespread criticism of vehicle bills. It certainly is not always, or even consistently, the case. Indeed, the restrained use of vehicle bills in South Dakota may actually reflect the need of legislators for a degree of flexibility in shaping legislation, as well as affording legislators the opportunity to take advantage of the full session to construct legislation that can attract majority support. This may be particularly important with particularly complex issues or matters that are tied to the general appropriations act. Additionally, the process may actually advance republican and

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42. See *supra* text accompanying note 39.

43. See *supra* note 37.

44. See *supra* note 37.

45. For all *passed* vehicle bills, the Legislative Research Council provided additional subject headings beyond "Hoghouse/Vehicle Bill." The subject headings were aggregated for all years, and the frequency of the headings is listed below from greatest to least:

Appropriation (9 bills); Emergency Clause (7 bills); State Affairs and Government (5 bills); Education (4 bills); Public Health and Safety (4 bills); Elections (3 bills); Insurance (3 bills); Legislature and Statutes (3 bills); School Districts (3 bills); Taxation (2 bills); Crimes (2 bills); Economic Development (2 bills); Agriculture and Horticulture (1 bill); Alcoholic Beverages (1 bill); Boards and Commissions (1 bill); Broadband (1 bill); Civil Forfeiture (1 bill); Counties (1 bill); Courts and Judiciary (1 bill); Criminal Procedure (1 bill); Disability (1 bill); Eminent Domain (1 bill); Employees (1 bill); Health Care (1 bill); Higher Education (1 bill); Judicial Remedies (1 bill); Mentally Ill Persons (1 bill); Minors (1 bill); Natural Resources (1 bill); Postsecondary Education (1 bill); Prison or Jail Cost Estimates (1 bill); Procurement of Public Improvements (1 bill); Promulgation of Rules (1 bill); Public Fiscal Administration (1 bill); Redistricting (1 bill); Sex Offenses (1 bill); Students (1 bill); Technical Institutes (1 bill); Tobacco Products (1 bill). See *supra* note 37.

democratic values by providing more time for informal deliberation and additional feedback from constituents so that the final bill actually reflects majority preferences.

What may be most important in the end is that legislators use the vehicle bill process thoughtfully to advance, rather than inhibit, republican and democratic values. Vehicle bills in South Dakota do not appear inherently good or bad for those processes. In other words, careful driving matters most when it comes to vehicle bills.

### APPENDIX A

#### DATA SUMMARY OF LEGISLATIVE ACTION REGARDING VEHICLE BILLS

	Year	2023	2022	2021	2020	2019	2018	2017	2016	2015	2014	2013	All Years
A	Introduced	17	32	37	30	46	9	16	23	15	17	19	261
B	Passed	2	3	4	2	6	2	1	2	2	4	3	31
C	Percentage of Introduced Bills Passed	12%	9%	11%	7%	13%	22%	6%	9%	13%	24%	16%	12%

**APPENDIX B****DATA SUMMARY OF VEHICLE BILLS AND COMMITTEE HEARINGS**

	Year	2023	2022	2021	2020	2019	2018	2017	2016	2015	2014	2013
D	Bills Withdrawn Before a Committee Hearing	0	4	3	8	4	1	5	1	0	1	0
E	Bills with at Least One Committee Hearing in One Chamber	4	15	15	20	32	5	9	10	5	9	11
F	Bills with at Least One Committee Hearing in Both Chambers	8	12	9	2	10	3	1	7	7	6	7
G	Bills with at Least One Hearing in Both Chambers and at Least One Hearing Before a Conference Committee or Joint Appropriations Committee	5	1	10	0	0	0	1	5	3	1	1

## APPENDIX C

## DATA SUMMARY OF VEHICLE BILLS AND AMENDMENTS

	Year	2023	2022	2021	2020	2019	2018	2017	2016	2015	2014	2013
H	Avg. No. Amend. Offered	1	0.9	0.5	0.2	0.9	1.5	1.3	0.5	1.7	1	1
I	Avg. No. Amend. Offered (Passed Bills)	2	2.7	2.2	1	3.4	5	11	2.5	5	2.6	3.3
J	Avg. No. of Bill Versions	1.9	1.7	1.6	1.2	1.5	1.9	1.6	1.3	2	1.8	1.7
K	Avg. No. of Days Between Last Amend. and Passage	10	6	5.5	8	12.8	11.5	1	10	5	4	2.7
L	Passed Bills with Less Than Two Days Between Last Amend. and Passage	1	0	0	0	0	0	1	1	1	1	0

**APPENDIX D****DATA SUMMARY OF VEHICLE BILLS AND LEGISLATIVE LEADERSHIP SPONSORS**

	Year	2023	2022	2021	2020	2019	2018	2017	2016	2015	2014	2013
M	Bills with a Sponsor in Leadership	11	11	16	16	24	4	13	16	14	15	16
N	Percentage of Introduced Bills with a Sponsor in Leadership	65%	34%	43%	53%	52%	44%	81%	70%	93%	88%	84%
O	Passed Bills with a Sponsor in Leadership	2	3	1	2	3	1	0	2	2	3	3
P	Percentage of Passed Bills with a Sponsor in Leadership	100%	100%	25%	100%	50%	50%	0%	100%	100%	75%	100%