

TO: Doug Gardner, Senate Majority Counsel
FROM: Susan Orlansky
DATE: March 21, 2024
RE: Article II, Section 16: Requirement for Joint Session to Reconsider A Governor's Veto

Question Presented

You asked for my independent analysis of the question: When the governor vetoes a bill and returns the bill to the legislature with a veto message, *when* must the legislature meet in joint session to reconsider passage of the vetoed bill?

Short Answer

The Alaska Constitution provides separate directions for when the legislature must meet in joint session, depending on whether the legislature is in session when the veto message is sent:

- (1) If the legislature is in session when the veto message is received:

The legislature shall meet immediately in joint session to reconsider the vetoed bill.

- (2) If the legislature is not in session when the veto message is received:

The legislature shall meet in joint session to reconsider the bill no later than the fifth day of the next regular or special session.

These are clear directives. As discussed below, the plain language of Article II, Section 16 dictates the answer to the question asked. Moreover, the straightforward reading of the Constitutional language is strongly supported by the Constitutional Convention Minutes, which explain the framers' intent in adopting this language, including the word "immediately." It is also supported by the actions of the First Legislature, which included members who had been delegates to the Constitutional Convention, and who therefore had a unique insight into what the framers intended.

Analysis

I began my review with the memorandum Doug Gardner prepared, dated March 11, 2024, which addresses the same question analyzed here. I will refer to that here as the Gardner Memo. Having reviewed that analysis and the attachments and done some additional research of my own, I concur overall with the analysis and conclusions of the Gardner Memo. Thus, I will not repeat all that is written there. In the pages that follow, I set forth my own way of considering the question presented, and I incorporate and refer to the Gardner Memo. as appropriate.

The language of the Alaska Constitution

Article II, section 16 of the Alaska Constitution discusses the requirement for the legislature to meet in joint session to reconsider a vetoed bill or item, and the required timing of such a joint session. The relevant sentences are the first, fourth, and fifth of the section. They are quoted here verbatim:

Upon receipt of a veto message during a regular session of the legislature, the legislature shall meet immediately in joint session and reconsider passage of the vetoed bill or item.

Bills vetoed after adjournment of the first regular session of the legislature shall be reconsidered by the legislature sitting as one body no later than the fifth day of the next regular or special session of that legislature.

Bills vetoed after adjournment of the second regular session shall be reconsidered by the legislature sitting as one body no later than the fifth day of a special session of that legislature, if one is called.¹

The language in the first sentence is unchanged since the Constitution was originally adopted. The other sentences just quoted reflect amendments and additions adopted in 1975 to deal specifically with special sessions and vetoes issued after adjournment of the second regular session.² Those amendments are not significant to the current analysis, but overall they reinforce the view that the Constitution *requires* the legislature to meet in joint session following any veto and requires that every such a session occur *promptly*.

¹ The omitted sentences from Article II, Section 16 address the number of votes required to override a veto and how the vote on reconsideration must be entered into the journal of each house. None of that is at issue now.

² See Gardner Memo. Attachment 2 (providing materials related to the Ninth Legislature, SCS CSHJR 11 (1975)).

Interpreting the Constitution

As the Gardner Memo. notes, when there is a dispute about the meaning of a provision in the Alaska Constitution, Alaska courts interpreting the Constitution focus most heavily on the words in the Constitution.³ Second, the courts consider the intent of the drafters of the constitutional language.⁴ Both of these strongly support the interpretation that, when a veto message is received while the legislature is in session, the legislature must meet in joint session to reconsider the vetoed bill or item, and the joint session must be held promptly.

1. The Constitutional language on its face requires the legislature to meet promptly in a joint session.

The Constitution states that, when the legislature receives a veto message while it is in session, the legislature “shall meet immediately in joint session” to reconsider the vetoed bill or item.

“Shall” denotes a mandate to act.⁵ Thus, the plain language of the Constitution – in the phrase “shall meet . . . in joint session” – unequivocally *requires* the legislature to meet in joint session after receiving a veto message. The legislature does not have discretion to choose not to meet in joint session.

The term “immediately” is not defined in the Constitution, but the ordinary and commonsense meaning of the term (which is what a court would consider⁶) suggests that the action must happen promptly, without undue delay. As applied to the particular context of scheduling and holding a joint session, an ordinary and commonsense understanding of

³ See Gardner Memo. at 2 n.4, quoting *State v. Alaska Legislative Council*, 515 P.3d 117, 123 (Alaska 2022) (“[O]ur analysis of a constitutional provision begins with, and remains grounded in, the words of the provision itself.” (internal quotation marks omitted)).

⁴ See Gardner Memo. at 2; *Kohlhaas v. State*, 518 P.3d 1095, 1114 (Alaska 2022); *Alaska Legislative Council*, 515 P.3d at 123.

⁵ See *Fowler v. Anchorage*, 583 P.2d 817, 819 (Alaska 1978) (“Unless the context otherwise indicates, the use of the word ‘shall’ denotes a mandatory intent.” (footnote omitted)); see also Gardner Memo. at 5 (citing *Fowler* and the Manual of Legislative Drafting at 66 (2023) (provided as Attachment 5 to the Gardner Memo.)).

⁶ See *Kohlhaas*, 518 P.3d at 1114 (“Because of our concern for interpreting the constitution as the people ratified it, we generally are reluctant to construe abstrusely any constitutional term that has a plain ordinary meaning, and we give provisions a reasonable and practical interpretation in accordance with common sense.” (internal quotation marks omitted)); *Alaska Legislative Council*, 515 P.3d at 123 (“[We] look to the plain meaning and purpose of the provision[.]” (internal quotation marks omitted)).

“immediately” would not require the legislature to interrupt everything else and come together in joint session within minutes of receiving a veto message – but neither could the legislature postpone the joint session for weeks.

There is no clear guidance on how many days would be too long to qualify as “immediately,” but the Constitution offers one sensible understanding of an outside time limit. Courts do not consider words in the Constitution in isolation, but consider related provisions together.⁷ As quoted above, Article II, Section 16 requires an “immediate” joint session if the legislature is in session when a veto message arrives, and it requires a joint session within five days of reconvening, if the legislature is not in session when the veto message arrives. The five-day time requirement for holding a joint session when the legislature needs to re-organize itself when returning for a new regular or special session suggests a reasonable outside limit on how “immediately” should be understood when the legislature already is in session. In other words, if five days after reconvening is enough time to arrange an agenda and a time to meet when legislators are scattered across the state when a veto message is issued, five days should be more than enough time to plan for and hold a joint session when legislators are already together.

2. The constitutional convention minutes support the view that the framers intended to require the legislature to meet in joint session promptly after receiving a veto message.

The Gardner Memo. provides a lengthy excerpt from the constitutional convention minutes, showing the discussion that occurred when the framers voted to add the term “immediately” to what became Article II, Section 16.⁸

Delegate Nordale, who proposed the amendment to add this word, stated that adding the term would ensure the veto would be considered quickly so that, if the veto is sustained, there would still be sufficient time for proponents to introduce a revised bill that might meet the governor’s objections. [Pages 1743-44] She explained that she expected the word to be interpreted reasonably, not literally; she suggested that the bill could be considered “at the first possible recess.” [Page 1744] She also noted that the word “immediately” is used in other constitutions the framers considered. [Page 1745]⁹

⁷ See *Alaska Legislative Council*, 515 P.3d at 123.

⁸ Attachment 2 to the Gardner Memo. includes excerpts from the Proceedings of the Alaska Constitutional Convention on January 11, 1956. The specific citations in the text refer to the page number of these Proceedings.

⁹ I have not reviewed the constitutions of other states or the case law pre-1956 that the framers could have reviewed from states that use the word “immediately” in their constitutional provisions dealing with the required legislative procedure following a veto. That could be an interesting, but time-consuming, line for additional research, particularly

When Delegate Sunborg stated that adding “immediately” might imply that the legislature would have to cease all other business and go into joint session as soon as the governor’s veto message hits the clerk’s desk, Delegate Nordale tried to withdraw her proposal rather than waste time quibbling over the word. [Page 1745]

Delegate Taylor objected to withdrawing the proposed amendment. He argued that including a word such as “immediately” or “within 24 hours” or something similar was necessary to make sure that the house of origin could not just sit on the bill and allow the veto to kill the bill without giving both chambers the chance to vote on reconsideration. [Page 1745]

After Delegate Taylor spoke, the framers voted 39-12 to adopt the amendment to add the word “immediately.” [Pages 1745-46]

This history reflects two purposes for adding “immediately” to Article II, Section 16: (1) to ensure that the veto is considered quickly so that proponents of the bill will have time to revise the bill if the veto is sustained, and (2) to ensure that a majority of one house alone cannot allow the veto to kill the bill and prevent the members of the other house from having a chance to vote to override the veto. Both these purposes are served by giving “immediately” a narrow meaning – i.e., a few days at most.

In short, the drafting history that shows the intent of the framers is fully consistent with the plain language of the words in the Constitution. The history supports the interpretation that the Constitution *requires* the legislature to meet in joint session after receiving a veto message; the joint session to reconsider the bill is mandatory and not discretionary.

Further, the history supports the interpretation that the Constitution requires the joint session to occur quickly. It suggests the framers’ intent that “immediately” be interpreted reasonably and not literally, but also not too broadly. In other words, the history indicates that the framers did not expect the legislature to drop everything and convene in joint session as soon as a veto message is received, but the framers also clearly intended that the joint session would occur quickly. Example time frames given by supporters of the amendment were “at the first possible recess” and “within the following day.” By using “immediately” instead of “no later than the fifth day,” the framers implicitly intended to

if one could first identify the other state constitutions that the drafters considered. Notably, the U.S. Constitution contains no limit for when Congress must vote on reconsideration of a vetoed bill. A bill can die if the originating chamber does not pass it to the other chamber by the end of the session. *See* Congressional Research Service, *Veto Override Procedure in the House and Senate* (Mar. 26, 2019), available at sgp.fas.org/crs/misc/R522654.pdf. The framers of Alaska’s Constitution undoubtedly were aware of the federal provisions, and it is fair to assume they deliberately chose a different model.

establish a shorter time period to meet when the legislature already is in session as compared to when the veto message is received while the legislature is not in session.

Interpreting the Legislature's Uniform Rules

The Gardner Memo. states that recent practice in the legislature has been to follow Uniform Rule 51,¹⁰ which establishes procedures for how the presiding officers of both houses or a majority of one house may call a joint session.

As a matter of separation of powers, courts generally decline to decide whether the legislature's own rules of procedure have been followed or violated¹¹ – but I want to note that Rule 51 does not appear to be the applicable rule for responding to a veto. Typically, a specific rule controls over a general rule,¹² and Rule 45 is the rule that is titled and that specifically addresses Vetoed Bills. This Rule provides that, after the governor returns a vetoed bill with his objections to the house of origin, the veto message is noted in the journal “and the other house is promptly requested to meet in joint session to reconsider passage of the vetoed bill or item.”¹³ Rule 45 also states that, if a bill is vetoed after the legislature adjourns, the bill “may be reconsidered by the full membership of the legislature sitting as one body not later than the fifth day after the next regular session or any intervening special session convenes during that legislature.”

The sentence applicable to bills vetoed while the legislature is in session suggests that the legislators who voted for this language understood the requirements of the Constitution in the same way as discussed above – i.e., that the joint session must occur promptly.

The legislature's early treatment of the requirement to meet in joint session after a veto

The Gardner Memo. notes that the original version of the Uniform Rules closely tracked the language of the Constitution and required the house receiving a veto message to have

¹⁰ See Gardner Memo. at 1 & n.2.

¹¹ See *Abood v. Legue of Women Voters*, 743 P.2d 333, 336-38 (Alaska 1987); *Malone v. Meekins*, 650 P.2d 351, 356 (Alaska 1982).

¹² See *Vazquez v. State, Office of the Lt. Gov.*, 2024 WL 878012, at *19 (Alaska Mar. 1, 2024); *Waiste v. State*, 808 P.2d 286, 289 (Alaska App. 1991) (“where one statute deals with a subject in general terms and another deals with a part of the same subject in more detail, the two should be harmonized if possible, but if there is any conflict, the more specific statute will prevail”).

¹³ Legislative Affairs Agency, Alaska State Legislature Uniform Rules, Rule 45 (as amended 2023).

it read “immediately” and then to “promptly inform” the other house of the veto; it stated that “both houses shall thereupon meet immediately in joint session and reconsider passage of the vetoed bill or item.”¹⁴ The First Legislature’s interpretation of the Constitution, as reflected in the rules it adopted, has some significance, since members of that legislature included several people who also served as delegates to the Constitutional Convention; they would be expected to be especially attuned to what the framers intended.

For the same reason, the actions of the First Legislature in dealing with the first vetoes by the executive have a special significance. As detailed in the Gardner Memo., on April 10, 1959, the Acting Governor notified the senate that he had vetoed three bills that had originated in the senate. Senators discussed the procedures they must follow, and concluded that the Constitution and the legislature’s rules required the senate and house to “meet immediately upon receiving a veto message.”¹⁵ Legislators acted in accordance with that understanding: a message was sent to the house requesting a joint session, and a joint session was held that same day.¹⁶ At the joint session, the members voted on one of the vetoed bills, and the veto was sustained. By unanimous consent, votes on the other two bills were postponed for one day, with the bills being referred to committees; on the following day, the committees reported to a joint session, and members at the joint session voted to override the vetoes.¹⁷

Again, the early history demonstrates that the legislators, some of whom were Constitutional Convention delegates, took the requirement to meet “immediately” almost literally: They met in joint session the same day the veto message was received. Their actions, based on their interpretation of the Constitution, were consistent with the Constitutional language and the intent of the framers and with the analysis set forth above.

Conclusion

For all the reasons set forth above, the Constitution requires the legislature to meet in joint session “immediately” after receiving a veto message, if the legislature is then in session. “Immediately” must be given its ordinary and reasonable meaning, as applied to the circumstances, so the joint session should be held promptly, and in no event more than five days later.

¹⁴ Gardner Memo. at 4, quoting Uniform Rules Alaska State Legislature, Rule 70 (adopted First Legislature – First Session 1959).

¹⁵ See Senate Journal (April 10, 1959) at 941 (available in Gardner Memo. Attachment 3); see also Gardner Memo. at 4-5; Senate Journal (April 10, 1959) at 933-35, 939, 941.

¹⁶ See Senate Journal (April 10, 1979) at 941, 943, 947-48; Gardner Memo. at 4-5.

¹⁷ See Senate Journal (April 10, 1959) at 947-48; Senate Journal (April 11, 1959) at 965-68.