

HB 758

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STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

August 8, 1973

TO: Alaska Legislative Council

FROM: Arthur H. Peterson, ^{AKP} Revisor of Statutes

SUBJECT: Revision of AS 01.10.070 (Time Statutes Takes Effect)

The attached bill is a revisor of statutes' recommendation for improvement of the statutes, offered under AS 01.05.036. This memorandum explains the problem and the provisions of the bill; it should accompany the bill through its legislative course and should be entered in the legislative journal at some appropriate point to provide evidence of legislative intent.

The present wording of AS 01.10.070 is inadequate and confusing, especially with regard to bills which the governor allows to become law without his signature. A recent relevant problem arose in connection with the effective date of ch. 84 SLA 1973 (interest rates). In a conference between Department of Law staff and Legislative Affairs Agency staff, we agreed that that Act would go into effect the 21st day after the governor's receipt of the bill from the legislature (since he was allowing it to become law without his signature). (See the April 27, 1973 memorandum from Assistant Attorney General Donna Pegues [nee Spragg] to Deputy Attorney General Norman Gorsuch, reflecting this agreement which, incidentally, is consistent with the conclusion of former Attorney General Ralph Moody in his March 1, 1961 letter to the governor, concerning ch. 26 SLA 1961, although we did not review that letter at the time of our discussion.)

However, our discussion preceding that agreement made clear that AS 01.10.070 needs amendment. Art. II, sec. 17 of the Alaska Constitution deals with bills passed by the legislature but not signed by the governor. It provides for what could be called "pocket enactment" (rather than "pocket veto"). It specifies a certain number of days for gubernatorial action and states that if a bill is not signed or vetoed within that period it "becomes law".

But the constitution does not say when such a bill becomes law. AS 01.10.070 provides, in subsec. (c), for becoming law on the day after the governor "has given written notice that he is allowing the law to become effective without his approval." That statute appears to have five basic defects:

- (1) there is no requirement that the governor give a written notice such as that referred to, so that the situation in which he allows a bill to become law without his signature but does not give written notice is not taken care of; (perhaps not likely to occur?);
- (2) the language in AS 01.10.070(c), "A law having an immediate effective date clause becomes law . . ." (emphasis added), suggests a confusion of the terms "effective date" and "becomes law"; (it also mixes up "Act", "bill", and "law", which, incidentally, art. II, sec. 18 of the Alaska Constitution does not really make clear); subsec. (b) of AS 01.10.070 uses them properly;
- (3) subsecs. (a) and (d) also mix up "Act", "bill", and "law";
- (4) the section does not deal at all with the case of a veto being overridden;
- (5) in that AS 01.10.070 could be applied to cut short the constitutionally granted period for gubernatorial action, it is unconstitutional; again, it may seem unlikely that the governor would want to change his mind and veto or sign a bill after he has given written notice that he is allowing it to become law without his signature, but it is possible, and the statute would seem to conflict with the constitution and therefore be invalid.

As noted on page 18 of the current edition (Dec. 1972) of our Manual of Legislative Drafting, it is perhaps helpful to

"Bear in mind the distinction between 'passage', 'enactment', and 'effective date'; each involves a different date. The legislature passes bills, which do not become enacted, however, until one of three things happens: (1) the governor signs the passed bill, (2) the governor allows the bill to become law without his signature, (3) the legislature overrides the governor's veto. When one of these events occurs the bill becomes an Act, or 'becomes law', and if it contains no effective-date clause it takes effect 90 days later." (Emphasis in original.)

A proposed revision of AS 01.10.070 is attached. It attempts to cure the five defects listed above. It adds the first sentence of (e) just because the requirement seems like a good idea in

keeping the record straight and showing that the governor intended the result; and, having added that sentence, the second sentence of (e) seems desirable for the sake of clarity.

In attempting the definitions in subsec. (f), this amendment seeks to avoid confusion and obviate the need to run through an analysis of the Alaska Constitution and the relationship of its relevant provisions each time the questions come up. The definition in (f)(4) is intended to cover all possible circumstances under which a bill passes, including the situations in which each house adopts a free-conference-committee report that proposes a version of a bill different from the versions previously passed in either house. (This does not get into the dispute over what constitutes "final passage" and whether a conference-committee report may be adopted by voice vote.)

The change from "clause" to "provision" in (b) and (c) is to avoid the apparent imprecision of "clause" in this context. The change from "signature" to "it is signed" in (b) is merely to provide construction parallel to that in (c), and the change from "enactment" to "becoming law" in subsec. (a) is merely to maintain consistent terminology (as stated in (f)(3), the two terms mean the same thing). (A cardinal principal of legislative drafting is avoiding the use of synonyms to express the same concept in more than one place; i.e., the same words should be used to express the same concept.)

Just as an interesting point, notice the confusion in the existing language of (c) between "allowing the law to become effective without his approval" and "allowing the bill to become law without his approval". We are not talking about his approval of the fact of the law taking effect or of whatever effective date may be involved; we are talking about his approval of the bill becoming an Act (or law); and the second, quoted wording here seems clearly to have been what was intended (instead of the first, which is what was used in the existing version).

In providing for the veto-override situation throughout AS 01.-10.070, it occurs to me that our standard immediate-effective-date provision -- "This Act takes effect on the day after its passage and approval or on the day it becomes law without approval." -- also needs to provide for this situation. The following table, which seems to help clarify our thinking on this, suggests this conclusion:

No effective-date provision:

	<u>Signature</u> May 1	<u>Override Veto</u> May 1	<u>Expiration of</u> <u>Signature Period</u> May 1
Becomes law ("enactment")	May 1	May 1	May <u>2</u>
Start counting the 90 days	May 2	May 2	May 2

Immediate-eff.-date provision:

	<u>Signature</u> May 1	<u>Override Veto</u> May 1	<u>Expiration of</u> <u>Signature Period</u> May 1
Becomes law ("enactment")	May 1	May 1	May <u>2</u>
Takes effect	May 2	May 2 (Under present standard clause, this would be May <u>1</u> , contrary to proposed AS 01.10.070(c).)	May 2

This table is based on the language of the proposed AS 01.10.070 above, and shows that the new language for that section offers a logically consistent arrangement. In each case, the effective date will be the same when the signature date or veto-override date or signature-period expiration date -- i.e., the date of the last significant enactment event -- is the same. In addition, in each case, the effective date for Acts with an immediate-effective-date provision will be the same as the date on which to begin counting for Acts with no effective-date provision -- as it should be. Therefore, to provide consistency when the veto of a bill with an immediate-effective-date provision is overridden, our standard immediate-effective-date provision should be revised to read something like: "This Act takes effect on the day after its passage and approval or on the date it becomes law without approval or on the day after its veto is overridden." Or it could read: "This Act takes effect immediately in accordance with AS 01.10.070(c)." (The brevity and flexibility of the latter make it look preferable.) This, of course, will require a change in our Manual of Legislative Drafting.

Note that it is only in the case of a bill with an immediate-effective-date provision which is allowed to become law without

the governor's signature that the date of becoming law will coincide with the effective date (which, in fact, is stated in the proposed AS 01.10.070(f)(5)). Note also that it is not necessary to state the time (e.g., 12:01 a.m.) of becoming law; only the date for that is important; the time is important for taking effect. And the attached proposed revision takes that into account.

The conclusions in this memorandum, and the recommended bill, are concurred in by the Department of Law (see July 19, 1973 memorandum from Assistant Attorney General Donna Pegues [nee Spragg] in reply to the revisor's June 27, 1973 memorandum to her) and the former executive director of the Alaska Legislative Council (see August 3, 1973 letter from John C. Doyle in reply to the revisor's July 30, 1973 letter to him).

AHP:lmk

Introduced: 2/28/74
Referred: Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST
OF THE LEGISLATIVE COUNCIL

2 HOUSE BILL NO. 758

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the time statutes become law and
7 take effect; and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 01.10.070 is amended to read:

10 Sec. 01.10.070. TIME STATUTES BECOME LAW AND TAKE EFFECT. (a)

11 All bills [LAWS] passed by the legislature become law upon the governor's
12 signature or upon his veto being overridden or, when he allows a bill
13 to become law without his signature, on the day after expiration of the
14 period allowed for gubernatorial action by art. II, sec. 17 of the
15 Alaska Constitution. Acts become effective 90 days after becoming law,
16 unless the [ENACTMENT. THE] legislature, [MAY] by concurrence of
17 two-thirds of the membership of each house, provides [PROVIDE] for
18 another effective date.

19 (b) The actual effective date of an Act [A BILL] having no
20 effective-date provision [CLAUSE] is determined by starting with the
21 day after it is signed [SIGNATURE] by the governor or the day after
22 his veto is overridden or the day after expiration of the period
23 allowed for gubernatorial action by art. II, sec. 17 of the Alaska
24 Constitution [ON WHICH HE GIVES WRITTEN NOTICE THAT HE IS ALLOWING IT
25 TO BECOME LAW WITHOUT HIS SIGNATURE], and counting 90 calendar days,
26 the Act [LAW] becoming effective at 12:01 a.m., Pacific Standard Time
27 [TIME] on the 90th day.

28 (c) The actual effective date and time of an Act [A LAW] having
29 an immediate-effective-date provision is [CLAUSE BECOMES LAW AT]

1 12:01 a.m., Pacific Standard Time, on the day after it is signed by
2 the governor or on the day after his veto is overridden or on the day
3 after expiration of the period allowed for gubernatorial action by
4 art. II, sec. 17 of the Alaska Constitution [HE HAS GIVEN WRITTEN
5 NOTICE THAT HE IS ALLOWING THE LAW TO BECOME EFFECTIVE WITHOUT HIS
6 APPROVAL].

7 (d) An Act [A LAW] which specifies [SPECIFIED] a definite effec-
8 tive date becomes effective at 12:01 a.m., Pacific Standard Time [TIME]
9 on the date specified.

10 (e) When the governor allows a bill to become law without his
11 signature, he shall give written notice of that fact to the legislature.
12 The date of this notice has no effect upon the date the bill becomes
13 law nor upon the date the Act takes effect.

14 (f) In this section

15 (1) "Act" means a bill which has become law;

16 (2) "bill" means a legislative document proposing an Act;

17 (3) "becomes effective" means becomes applicable; "effective
18 date" does not mean date of enactment (or date of becoming law),
19 although the two will coincide when a bill which has an immediate-
20 effective-date provision is allowed to become law without the governor's
21 signature;

22 (4) "becomes law" means is enacted; "enactment" occurs when
23 any one of the following takes place:

24 (A) a bill which is passed by the legislature is signed
25 by the governor;

26 (B) the period specified in art. II, sec. 17 of the
27 Alaska Constitution expires without gubernatorial action;

28 (C) the legislature overrides the governor's veto of
29 a bill;

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(5) "passed by the legislature" means that the required majority of each house of the legislature has taken final action in approving the same version of a bill.

* Sec. 2. This Act takes effect on the day after its passage and approval or on the day it becomes law without approval.