

MEMORANDUM

State of Alaska

Department of Law

TO: Randy Ruaro
Chief of Staff

DATE: June 17, 2021

THRU: Treg Taylor
Attorney General

TEL. NO.: (907) 465-3600

FROM: Cori Mills *CMM*
Deputy Attorney General

SUBJECT: CCS HB 69 operating
budget and failure of
special effective date
provision

You requested that we prepare a memorandum for potential public dissemination on the question of whether appropriations authorized under CCS HB 69 for fiscal year 2022 can be expended immediately despite the failure of the legislature to pass a special effective date provision in the bill. The Alaska Constitution is clear that laws passed by the legislature become effective ninety days after enactment unless a special effective date has been included in the bill.

Accordingly and as set forth below, we believe that expenditures of state funds provided under CCS HB 69 cannot be made until that bill becomes law which is ninety days after its enactment – with a very limited exception for spending that is necessary to meet constitutional obligations of the state such as maintaining the health and safety of its residents or to comply with federal requirements.

The Alaska Constitution expressly provides that there shall be no spending of state funds without an appropriation by the legislature:

No money shall be withdrawn from the treasury **except in accordance with appropriations made by law**. No obligation for the payment of money shall be incurred except as authorized by law. Unobligated appropriations outstanding at the end of the period of time specified by law shall be void.¹

The Alaska Constitution, article II, section 18, also expressly addresses when a law passed by the legislature becomes effective:

¹ Alaska Const. art. IX, sec. 13.

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Laws passed by the legislature become effective ninety days after enactment. The legislature may, by concurrence of two-thirds of the membership of each house, provide for another effective date.²

The Alaska Supreme Court has made clear that the “analysis of a constitutional provision begins with, and remains grounded in, the words of the provision itself.”³ Here, there is no question that CCS HB 69 is a “law” making appropriations and there is also no dispute that the legislature did not by concurrence of two-thirds of the membership of each house provide for a special effective date. Thus, under a plain application of the Alaska Constitution it is clear that the appropriations set forth in CCS HB 69 are only authorized to be expended when that bill becomes law which is ninety days after enactment.

Finally, we note that there is a retroactivity provision in the bill that applies to the appropriations included in CCS HB 69. But a retroactivity clause has no effect until the bill becomes law because an effective date clause operates independently from the date of retroactive application. The Alaska Supreme Court spoke to this issue in *Arco Alaska, Inc. v. State*, 824 P.2d 798 (Alaska 1992) in the context of a tax statute. According to the *Arco* opinion, a law’s effective date and its retroactive date are “two distinctly different concepts.” and that a retroactive law applies to conduct occurring before enactment of the law, but the legal effect produced by the law occurs only after the law’s effective date.

CMM/rjc

Attachment: Alaska Const. excerpt, sec. 18

² Alaska Const. art. II, sec. 18.

³ *Wielechowski v. State*, 403 P.3d 1141, 1146 (Alaska 2017).

P.2d 844 (Alaska 1981); *Abood v. Gorsuch*, 703 P.2d 1158 (Alaska 1985).

Quoted in *Alaskans for Efficient Gov't, Inc. v. State*, 153 P.3d 296 (Alaska 2007).

Collateral references. — 73 Am.Jur.2d, Statutes, § 33.
82 C.J.S., Statutes, § 53.

Section 18. Effective Date. Laws passed by the legislature become effective ninety days after enactment. The legislature may, by concurrence of two-thirds of the membership of each house, provide for another effective date.

Cross references. — See notes to Alaska Const., art. II, § 17. For time statutes become law and take effect, see AS 01.10.070.

Opinions of attorney general. — If the legislature is in or out of session and the bill under consideration has an effective date clause, then, in that

event, the effective date to be recorded will be controlled by the terms of the clause establishing the effective date computed from the last moment in which the governor could have affirmatively acted. 1959 Alas. Op. Att'y Gen. No. 21.

NOTES TO DECISIONS

Purpose. — The clause that laws do not become effective, unless a two-thirds vote of the membership of each house provides otherwise, until 90 days after they are enacted is designed to provide a fair opportunity to those people affected by legislation to learn of the laws they must live by. *State v. A.L.I.V.E. Voluntary*, 606 P.2d 769 (Alaska 1980).

The legislative veto contained in AS 44.62.320(a), which provides that the "legislature, by a concurrent resolution adopted by a vote of both houses, may annul a regulation of an agency or department," violates this article of the state constitution. *State v. A.L.I.V.E. Voluntary*, 606 P.2d 769 (Alaska 1980).

Act not suspended between its effective date and its rejection by referendum. — In the light of the clear wording of this section, art. II, § 18 and art. XI, § 6, the framers of the constitution and the people who adopted it intended that the effectiveness of an act passed by the legislature should not be suspended during the period between its effective date and its rejection by the referendum. If they had intended

otherwise they would have expressly so provided in the constitution. *Walters v. Cesse*, 388 P.2d 263 (Alaska 1964).

Laws containing retroactive provisions. — This section does not require a two-thirds vote of both houses of the legislature for the passage of laws containing retroactive provisions. *ARCO Alaska v. State*, 824 P.2d 706 (Alaska 1992).

Applied in *State v. Kaatz*, 572 P.2d 775 (Alaska 1977); *State ex rel. Hammond v. Allen*, 625 P.2d 844 (Alaska 1981); *Atlantic Richfield Co. v. State*, 705 P.2d 418 (Alaska 1985).

Quoted in *In re Brewer*, 430 P.2d 150 (Alaska 1967); *Fowler v. State*, 70 P.3d 1106 (Alaska Ct. App. 2003); *Alaskans for Efficient Gov't, Inc. v. State*, 153 P.3d 296 (Alaska 2007); *Pfeifer v. State*, 260 P.3d 1072 (Alaska 2011).

Stated in *Anchorage Mun. Emples. Ass'n v. Municipality of Anchorage*, 618 P.2d 575 (Alaska 1980).

Cited in *North Slope Borough v. Sohio Petroleum Corp.*, 585 P.2d 534 (Alaska 1978); *Sowinski v. Walker*, 198 P.3d 1134 (Alaska 2008).

Collateral references. — 72 Am.Jur.2d, Statutes, §§ 245 to 254.
82 C.J.S., Statutes, §§ 388 to 406.

Section 19. Local or Special Acts. The legislature shall pass no local or special act if a general act can be made applicable. Whether a general act can be made applicable shall be subject to judicial determination. Local acts necessitating appropriations by a political subdivision may not become effective unless approved by a majority of the qualified voters voting thereon in the subdivision affected.

NOTES TO DECISIONS

Legislative powers governed by this section. — This section governs the exercise of all legislative powers expressly granted by other portions of the constitution. *Abrams v. State*, 534 P.2d 91 (Alaska 1975).

No exceptions to prohibition of this section. —

There is no intimation in the language of this section or in the articles concerning local government which would create an exception to this prohibition against local or special laws. *Abrams v. State*, 534 P.2d 91 (Alaska 1975).

Alaska Const., art. X, § 3 was not intended to