

Chambers of
Joel H. Bolger
Justice

Supreme Court
State of Alaska

303 K Street
Anchorage, Alaska
99501-2013

(907) 264-0633
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June 21, 2021

The Honorable Peter Micciche
via email: Senator.Peter.Micciche@akleg.gov
President of the Alaska State Senate
State Capitol Room 111
Juneau AK 99801

The Honorable Louise Stutes
via email: Representative.Louise.Stutes@akleg.gov
Speaker of the Alaska State House of Representatives
State Capitol Room 208
Juneau AK 99801

Dear Senator Micciche and Representative Stutes:

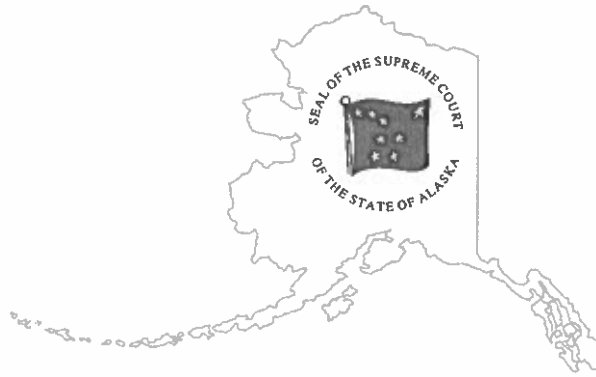
Please find enclosed a letter and attachments I received from Governor Dunleavy and my response.

Best regards,

Joel H. Bolger
Chief Justice

Attachments: Letter to Governor Dunleavy, dated June 21, 2021
Letter to Chief Justice Bolger, with attachment, dated June 18, 2021

cc: Governor Mike Dunleavy (w/o enc.)
Justice Daniel Winfree (w/o enc.)



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June 21, 2021

Governor Mike Dunleavy
State of Alaska
P.O. Box 110001
Juneau, Alaska 99811-0001

(Via email/First Class Mail)

Dear Governor Dunleavy:

I'm writing in response to your letter of June 18, 2021. Please note that I am not allowed to engage in ex parte communications with any party to an impending legal action. Even on scheduling issues the communications must not deal with substantive matters or the merits of the issues to be litigated. I'm sure the Attorney General's office is familiar with the proper procedures to bring your concerns to the attention of the appropriate forum.

Sincerely,

Joel H. Bolger
Chief Justice

cc: Justice Winfree

STATE CAPITOL
P.O. Box 110001
Juneau, AK 99811-0001
907-465-3500



550 West Seventh Avenue, Suite 1700
Anchorage, AK 99501
907-269-7450

Governor Mike Dunleavy
STATE OF ALASKA

June 18, 2021

The Honorable Joel H. Bolger
Chief Justice
Alaska Supreme Court
303 K Street
Anchorage, AK 99501

Re: Failure Of Legislature To Pass A Fiscal Year 2022 Budget Bill With An Effective Date

Dear Chief Justice Bolger:

The Legislature has passed a bill making general appropriations for the 2022 Fiscal Year (Conference Committee Substitute for House Bill 69). The proposed effective date for CCSHB 69 is July 1, 2021; however, the Legislature failed to obtain the requisite "concurrence of two-thirds of the members of each house" to "provide for another effective date" as opposed to the otherwise constitutionally-mandated effective date of 90 days from enactment (*Article II, Section 18*).

I have been advised by the Office of the Attorney General that there is no language in Article II, Section 18 providing an exception to the constitutional effective date requirement. Based on that advice, and the requirements in many of our collective bargaining contracts, lay-off notices were issued to state employees that if a general appropriation bill with the July 1 effective date is not resolved with the requisite concurrence of the Legislature by June 30, 2021 at midnight, they are subject to lay-off from state service.

Some members of the Legislature cited a decades-old informal Attorney General opinion dealing with the discretion of a Governor to approve supplemental funding where a previous appropriation is already in effect as authority for me to ignore the plain language of Article II, Section 18.

Despite the personal opinions of certain legislators, I cannot go against the advice of my Attorney General and the clear constitutional language to authorize and implement the FY 2022 budget (after the veto review process has concluded).

Because of the significant and serious consequences flowing from the lack of an effective date, I have asked my Attorney General to seek a determination of the issue through the Alaska Court System.

Chief Justice Joel Bolger

June 18, 2021

Page 2 of 2

Please address this issue in the most expedited way possible. Alaskans need, and deserve, a budget that meets constitutional requirements.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Dunleavy". The signature is written in a cursive style with a large, sweeping initial "M".

Mike Dunleavy
Governor

Enclosures

cc: The Honorable Daniel Winfee, Alaska Supreme Court Justice
Treg Taylor, Attorney General, State of Alaska

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 *CM*
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.

To: Randy Ruaro, Chief of Staff
Re: CCS HB 69 operating budget; special effective date provision

June 17, 2021
Page 2 of 2

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 708 (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); *Aboud 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. Cease*, 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 708 (Alaska 1992).

Applied in *State v. Kaatz*, 572 P.2d 775 (Alaska 1977); *State ex rel. Hammond v. Allan*, 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. Emplos. 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