



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 13, 2017

FILE NO. 17-002

BILLS:
Effective Date of Laws

The Honorable Bill Brady
Senate Republican Leader Designee
State Senator, 44th District
309G State House
Springfield, Illinois 62706

The Honorable Jim Durkin
House Republican Leader
State Representative, 82nd District
316 State House
Springfield, Illinois 62706

Gentlemen:

I have your letters concerning the effective date of Senate Bill 1 of the 100th

General Assembly. Specifically, you have inquired regarding the effective date for a Public Act if the underlying bill is the subject of an amendatory veto by the Governor with specific recommendations for change, and: (1) the amendatory veto is overridden; or (2) the Governor's specific recommendations for change are accepted. For the reasons explained below, when the

The Honorable Bill Brady
The Honorable Jim Durkin - 2

underlying bill includes an immediate effective date and is the subject of an amendatory veto, the effective date of a Public Act is determined by the date of the final legislative action on the underlying bill and then by the action the General Assembly takes on the amendatory veto, voting to either override or accept the Governor's recommendations for change. For purposes of Senate Bill 1, it is my opinion that, in the event that three-fifths of the elected members of both houses of the General Assembly vote to override the amendatory veto, the Public Act's effective date would be the date upon which the second house of the General Assembly, in this case the House of Representatives, votes to override the Governor's specific recommendations for change. In the event that three-fifths of the elected members of both houses of the General Assembly vote to accept the Governor's specific recommendations for change, the effective date of the Public Act would be the date upon which the Governor certifies that his recommendations have been accepted by the General Assembly.

PROCEDURAL BACKGROUND

Senate Bill 1 is a comprehensive amendment of the School Code (105 ILCS 5/1-1 *et seq.* (West 2016)), as well as a number of other related statutes, intended to create, among other things, an evidence-based funding method for Illinois' public schools. Senate Bill 1 contains language authorizing an immediate effective date for the bill. *See* 100th Ill. Gen. Assem., Senate Bill 1, §99, 2017 Sess.

The Honorable Bill Brady
The Honorable Jim Durkin - 3

Senate Bill 1 passed the Senate on May 17, 2017. The bill was amended twice in the House and then passed by a vote of 60-52 on May 31, 2017. The Senate concurred with the House amendments to Senate Bill 1 by a vote of 35-22 on May 31, 2017.¹

On May 31, 2017, Senator Trotter, one of the chief co-sponsors of the bill who voted on the prevailing side of the concurrence vote, filed a Motion to Reconsider the Senate's vote on Senate Bill 1. On July 31, 2017, Senator Trotter withdrew his Motion to Reconsider, and Senate Bill 1 was sent to the Governor. On August 1, 2017, Senate Bill 1 was returned to the Senate with the Governor's specific recommendations for change.² On the same date, the Senate placed Senate Bill 1 on the amendatory veto calendar. Under the Illinois Constitution, the Senate has 15 calendar days after the Governor's objections to a bill are entered into its journal to consider the Governor's specific recommendations for change. Ill. Const. 1970, art. IV, §9(c).

The Senate may, within the indicated period of time, vote by three-fifths of the elected members, a minimum of 36 members, to override the specific recommendations for change. If it does so, then Senate Bill 1 is to be immediately delivered to the House. Ill. Const.

¹See 100th Ill. Gen. Assem., Senate Proceedings, May 31, 2017 (Senate Audio CD Floor Debate on Senate Bill 1).

²Article IV, section 9(e), of the Illinois Constitution provides:

(e) The Governor may return a bill together with specific recommendations for change to the house in which it originated. The bill shall be considered in the same manner as a vetoed bill but the specific recommendations may be accepted by a record vote of a majority of the members elected to each house. Such bill shall be presented again to the Governor and if he certifies that such acceptance conforms to his specific recommendations, the bill shall become law. If he does not so certify, he shall return it as a vetoed bill to the house in which it originated.

The Honorable Bill Brady
The Honorable Jim Durkin - 4

1970, art. IV, §9(c); Senate Rule 9-6, 100th Ill. Gen. Assem. If the House, within 15 calendar days of receiving the bill,³ votes by three-fifths of its elected members, at least 71 members, to override the specific recommendations for change, then the bill "shall become law." Ill. Const. 1970, art. IV, §9(c), (e).

The Senate, within 15 calendar days of entering the Governor's specific recommendations for change into its journal, may also vote to accept the Governor's amendatory veto. The Illinois Constitution generally requires only a record vote of a majority of members elected in each house to accept the Governor's recommendations for change. *See* Ill. Const. 1970, art. IV, §9(e). As discussed below, however, because Senate Bill 1 contains an immediate effective date and the final legislative action on it will necessarily occur after May 31, a three-fifths vote in each house will be required to pass Senate Bill 1. If the Senate votes by three-fifths to accept the Governor's amendatory veto, then Senate Bill 1 will be delivered to the House. The House then has 15 calendar days to consider the Governor's recommendations for change. If the House votes by three-fifths of the elected members to accept the Governor's amendatory veto, then Senate Bill 1 is presented to the Governor again. If the Governor certifies that the General Assembly's acceptance conforms to his specific recommendations for change, "the bill shall become law." Ill. Const. 1970, art. IV, §9(e).

³Each house of the General Assembly has 15 days for the consideration of vetoed bills. The aggregate time may extend beyond 30 days, however, if delays occur in the transmission of the notice of the first house's result to the second house. 6 Record of Proceedings, Sixth Illinois Constitutional Convention, 399-400.

The Honorable Bill Brady
The Honorable Jim Durkin - 5

Against this background, you have inquired regarding the effective date of Senate Bill 1 should it become a Public Act either by the General Assembly's override of the Governor's amendatory veto or its acceptance of the Governor's specific recommendations for change.

ANALYSIS

Effective Date of Laws

Article IV, section 10, of the Illinois Constitution of 1970 directs the General Assembly to "provide by law for a uniform effective date for laws *passed prior to June 1* of a calendar year" and provides that the General Assembly may "provide for a different effective date in any law *passed prior to June 1*." (Emphasis added). Article IV, section 10, further states, however, that a "*bill passed after May 31* shall not become effective prior to June 1 of the next calendar year unless the General Assembly by the vote of three-fifths of the members elected to each house provides for an earlier effective date." (Emphasis added.)

Pursuant to this constitutional mandate, the General Assembly enacted the Effective Date of Laws Act. 5 ILCS 75/0.01 *et seq.* (West 2016).⁴ With respect to bills passed prior to June 1, section 1 of the Effective Date of Laws Act (5 ILCS 75/1 (West 2016)) provides as follows:

(a) A bill passed prior to June 1 of a calendar year that does not provide for an effective date in the terms of the bill shall become effective on January 1 of the following year, or upon its becoming a law, whichever is later.

⁴The purpose of the Effective Date of Laws Act is to ensure that parties have sufficient opportunity to conform their conduct to the law and alleviate confusion when the Governor's action on a bill occurs subsequent to the specified effective date in the bill. *People ex rel. Alvarez v. Howard*, 2016 IL 120729, ¶ 22, 72 N.E.3d 346, 353 (2016), citing *Mulligan v. Joliet Regional Port District*, 123 Ill. 2d 303, 315 (1988); *People ex rel. American Federation of State, County & Municipal Employees v. Walker*, 61 Ill. 2d 112, 118 (1975).

The Honorable Bill Brady
The Honorable Jim Durkin - 6

(b) A bill passed prior to June 1 of a calendar year that does provide for an effective date in the terms of the bill shall become effective on that date if that date is the same as or subsequent to the date the bill becomes a law; provided that if the effective date provided in the terms of the bill is prior to the date the bill becomes a law then the date the bill becomes a law shall be the effective date. (Emphasis added.)

Section 2 of the Effective Date of Laws Act (5 ILCS 75/2 (West 2016)) further provides:

A bill passed after May 31 of a calendar year shall become effective on June 1 of the next calendar year unless the General Assembly by a vote of three-fifths of the members elected to each house provides for an earlier effective date in the terms of the bill or unless the General Assembly provides for a later effective date in the terms of the bill; provided that if the effective date provided in the terms of the bill is prior to the date the bill becomes a law then the date the bill becomes a law shall be the effective date. (Emphasis added.)

Section 3 of the Effective Date of Laws Act (5 ILCS 75/3 (West 2016)) provides that, for purposes of determining the effective dates of laws, "*a bill is 'passed' at the time of its final legislative action prior to presentation to the Governor pursuant to paragraph (a) of Section 9 of Article IV of the Constitution.*"⁵ (Emphasis added.)

In construing the Effective Date of Laws Act, Attorney General Scott identified four legislative actions, depending on a bill's particular legislative history, that may constitute

⁵The Illinois Supreme Court has construed the statutory definition of "passed" (added by Public Act 78-085, effective July 13, 1973) harmoniously with its prior decisions (*see People ex rel. Klinger v. Howlett*, 50 Ill. 2d 242, 247-48 (1972); *Board of Education of School District No. 41 v. Morgan*, 316 Ill. 143, 151 (1925)), which defined the time when a bill is "passed" for purposes of determining its effective date as the time of the last legislative act necessary for a bill to become law upon its acceptance by the Governor without further action by the legislature. *See Mulligan*, 123 Ill. 2d at 315; *City of Springfield v. Allphin*, 74 Ill. 2d 117, 128-29 (1978); *see also* 1974 Ill. Att'y Gen. Op. 119, 122-23.

The Honorable Bill Brady
The Honorable Jim Durkin - 7

"final legislative action prior to presentation to the Governor pursuant to paragraph (a) of Section 9 of Article IV of the Constitution" under section 3 of the Effective Date of Laws Act. Opinion No. S-725, issued March 21, 1974 (1974 Ill. Att'y Gen. Op. 119, 123) provided:

the phrase "final legislative action prior to presentation to the Governor pursuant to paragraph (a) of section 9 of article IV of the Constitution" encompasses the following four situations:

- (1) Passage on third reading in the second house;
- (2) Concurring in or receding from an amendment;
- (3) Adoption of a conference committee report;
- (4) Acceptance of the Governor's specific recommendations for change.⁶

The Illinois Supreme Court has also addressed this issue and reached the same conclusion. In *Mulligan v. Joliet Regional Port District*, 123 Ill. 2d 303 (1988), the Court concluded that the phrase "final legislative action prior to presentation to the Governor pursuant to paragraph (a) of Section 9 of Article IV of the Constitution[,]" as set out in section 3, includes the same four legislative actions previously identified in Attorney General Scott's opinion. *Mulligan*, 123 Ill. 2d at 313-18.

Final Legislative Action on Senate Bill 1

Your inquiry involves a bill upon which a motion to reconsider was filed but then withdrawn without the Senate taking any action upon it. As the basis of your inquiry, you

⁶Although section 1 of the Effective Date of Laws Act has been amended to change the calendar dates referenced therein, the remaining language of section 1 and the language of section 3 are the same in substance as that construed in opinion No. S-725. In the 1974 opinion, Attorney General Scott construed the provisions of "An ACT in relation to the effective date of laws" (Ill. Rev. Stat. 1973, ch. 131, pars. 21 *et seq.*). Public Act 86-1324, effective September 6, 1990, added the short title "Effective Date of Laws Act" (Ill. Rev. Stat. 1990 Supp., ch. 1, par. 1200) to "An ACT in relation to the effective date of laws" (Ill. Rev. Stat. 1979, ch. 1, Disposition Table).

The Honorable Bill Brady
The Honorable Jim Durkin - 8

assume that the withdrawal of a motion to reconsider is a final legislative action for purposes of determining the effective date of a law. However, the Senate did not vote on Senator Trotter's Motion to Reconsider or the withdrawal of his Motion to Reconsider. Rather, Senator Trotter simply withdrew the motion with a written request to the Secretary of the Senate without Senate action on it. Further, a motion to reconsider and a motion to withdraw a motion to reconsider are not included in the list of actions that the Illinois courts or prior opinions of this office have determined constitute "final legislative action prior to presentation to the Governor pursuant to paragraph (a) of Section 9 of Article IV of the Constitution." Accordingly, for purposes of determining the effective date for Senate Bill 1, there is no legal support for the conclusion that final legislative action took place on July 31, 2017, when Senator Trotter withdrew his Motion to Reconsider.

In determining the date of final legislative action, the relevant Illinois cases and Attorney General opinions distinguish between those situations in which the General Assembly votes to override a veto and those in which the General Assembly accepts the Governor's recommendations for change. The basis for this distinction is that a veto override leaves the bill unchanged from when the General Assembly took final legislative action before sending the bill to the Governor. In contrast, accepting an amendatory veto changes the language of the bill.

When the General Assembly overrides the Governor's veto, the act of voting to override is a reaffirmation of the bill's original language. *Mulligan*, 123 Ill. 2d at 316, citing *City of Springfield v. Allphin*, 74 Ill. 2d 117 (1978); see also Remarks of Rep. Day, May 15, 1973,

The Honorable Bill Brady
The Honorable Jim Durkin - 9

House Debate on House Bill No. 678, which as enacted became Public Act 78-085, effective July 13, 1973, and added sections 1(b) and 2 through 6 to the Effective Date of Laws Act, at 91. As a result, the final legislative action is deemed to have occurred when the bill was passed by the General Assembly initially. *Allphin*, 74 Ill. 2d at 129 (a bill subject to a simple non-amendatory veto that is overridden "'passed' at the time of its initial passage by the General Assembly"); 1975 Ill. Att'y Gen. Op. 77, 85 (a bill subject to an amendatory veto that is overridden "'is 'passed' when the original substantive legislative action * * * occurred preceding the bill's submission to the Governor for signature"); *see also* Remarks of Rep. Day, May 14, 1973, House Debate on House Bill No. 678, which as enacted became Public Act 78-085, effective July 13, 1973, at 97-99.

However, the acceptance of an amendatorily vetoed bill is deemed final legislative action because the General Assembly's vote changes the language of the bill. *Mulligan*, 123 Ill. 2d at 316. As the Court explained, "[a] bill changed upon the Governor's specific recommendation is no longer the same bill as initially 'passed' by the General Assembly and the 'final legislative action' would not simply be a reaffirmation of the bill's original language as in the situation involving an override of a non-amendatorily vetoed bill." *Mulligan*, 123 Ill. 2d at 316, citing *Allphin*, 74 Ill. 2d 117. Thus, when the General Assembly votes to accept the Governor's recommendations for change, the final legislative action does not occur "until the final vote approving the Governor's recommended changes is taken in the General Assembly." *Mulligan*, 123 Ill. 2d at 317. In reaching its conclusion, the Court noted that its opinion was supported by a long line of Attorney General opinions. *Mulligan*, 123 Ill. 2d at 317, citing 1975

The Honorable Bill Brady
The Honorable Jim Durkin - 10

Ill. Att'y Gen. Op. 77; 1974 Ill. Att'y Gen. Op. 119; 1972 Ill. Att'y Gen. Op. 282; *see also* 1991

Ill. Att'y Gen. Op. 134.

Override of an Amendatory Vote with Specific Recommendations for Change

Applying these principles to your inquiry, if the General Assembly votes to override the Governor's recommendations for change, the date of the final legislative action, the point at which Senate Bill 1 passed, will be the date of the Senate concurrence vote, which was May 31, 2017. Under subsection 1(b) of the Effective Date of Laws Act (5 ILCS 75/1(b) (West 2016)), a bill "passed prior to June 1 of a calendar year" that includes an effective date in the terms of the bill shall become effective "on that date if that date is the same as or subsequent to the date the bill becomes a law[.]" A bill that is subject to an amendatory veto that is overridden becomes law upon the override vote of the second house. 1975 Ill. Att'y Gen. at 85. Thus, Senate Bill 1 would become effective on the date that it becomes law, which would be the date on which the House of Representatives votes by three-fifths to override the Governor's specific recommendations for change.⁷

⁷By way of example, we note the similar procedural history of legislation enacted during the 97th General Assembly. *See* 97th Ill. Gen. Assem., Senate Bill 1652, 2011 Sess. In the case of Senate Bill 1652, known as the "smart grid" bill, most of the substantive provisions were added by amendments adopted in the House. On May 30, 2011, Senate Bill 1652, as amended, passed the House (67 members voted "yes," 47 voted "no," and 1 voted "present"). On May 31, 2011, the Senate voted to concur with each House amendment (31 members voted "yes," 24 voted "no," and 4 voted "present"). On June 1, 2011, Senate President Cullerton filed a Motion to Reconsider the vote. After the Motion to Reconsider was withdrawn on August 26, 2011, Senate Bill 1652 was sent to the Governor on August 29, 2011. Governor Quinn vetoed Senate Bill 1652 on September 12, 2011. On October 26, 2011, the Senate (36 members voted "yes," 19 voted "no," and 2 voted "present") and the House (74 members voted "yes" and 42 voted "no") voted to override the Governor's veto, and Senate Bill 1652, which included an immediate effective date, became Public Act 97-616, effective on October 26, 2011.

The Honorable Bill Brady
The Honorable Jim Durkin - 11

**Acceptance of an Amendatory Veto
with Specific Recommendations for Change**

If the General Assembly votes to accept the Governor's recommendations for change, the date of final legislative action on Senate Bill 1 will be the date of the second house's final vote to accept the amendatory veto because the final language of the bill will differ from the language on which the legislature voted on May 31st. The effective date is governed by section 2 of the Effective Date of Laws Act (5 ILCS 75/2 (West 2016)). Under section 2, a bill "passed after May 31 of a calendar year shall become effective on June 1 of the next calendar year unless the General Assembly by a vote of three-fifths of the members elected to each house provides for an earlier effective date in the terms of the bill[.]" Thus, if the General Assembly accepts the Governor's recommendations pursuant to the amendatory veto on Senate Bill 1 by three-fifths vote, the revised bill will become law when the Governor certifies that his recommendations have been accepted by the General Assembly.

Although the Illinois Constitution generally permits a record vote of a majority of members elected in each house to accept the Governor's recommendations for change (*see* Ill. Const. 1970, art. IV, §9(e)), the Constitution also specifically provides that a bill passed after May 31 cannot take effect prior to June 1 of the following year unless the bill receives a three-fifths vote in each house. *See* Ill. Const. 1970, art. IV, section 10. In addition to this constitutional requirement, as noted above, section 2 of the Effective Date of Laws Act provides "[a] bill passed after May 31 of a calendar year shall become effective on June 1 of the next calendar year unless the General Assembly by a vote of three-fifths of the members elected to

The Honorable Bill Brady
The Honorable Jim Durkin - 12

each house provides for an earlier effective date in the terms of the bill[.]” Senate Bill 1 contains an immediate effective date provision. *See* 100th Ill. Gen. Assem., Senate Bill 1, §99, 2017 Sess. By expressly including an immediate effective date in Senate Bill 1, the General Assembly has indicated its intent to exclude all other possible effective dates. Allowing the bill to take effect on June 1, 2018, would render the immediate effective date provision set out in the bill superfluous. A statute should be construed, when possible, so that no clause is rendered meaningless or superfluous. *Niven v. Siqueira*, 109 Ill. 2d 357, 365-66 (1985); *Bernstein v. Department of Human Services*, 392 Ill. App. 3d 875, 886 (2009). In order to give effect to Senate Bill 1's immediate effective date provision, a vote to accept the Governor's amendatory veto should be by three-fifths of each house.

CONCLUSION

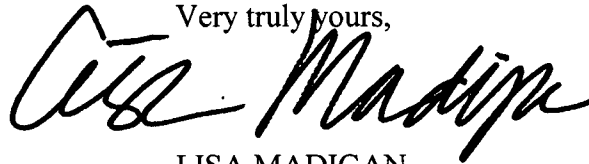
For the reasons stated above, it is my opinion that the effective date of a Public Act for which the underlying bill contains an immediate effective date and was the subject of an amendatory veto is determined by the date of the final legislative action on the underlying bill and then by the action the General Assembly takes on the amendatory veto, voting either to override or accept the recommendations for change.

If the General Assembly successfully votes to override a Governor's amendatory veto on a bill that contains an immediate effective date, like Senate Bill 1, then the Public Act's effective date would be the date upon which the second house votes to override. Alternatively, in the event that three-fifths of the elected members of both houses of the General Assembly vote to accept the Governor's specific recommendations for change, the effective date of the Public Act

The Honorable Bill Brady
The Honorable Jim Durkin - 13

would be the date upon which the Governor certifies that his recommendations have been
accepted by the General Assembly.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa Madigan". The signature is fluid and cursive, with the first name "Lisa" written in a smaller, more compact script than the last name "Madigan".

LISA MADIGAN
ATTORNEY GENERAL