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MEMORANDUM

TO: President John L. Valentine

FROM: M. Gay Taylor, General Counsel *MT*
Thomas R. Vaughn, Associate General Counsel *TRV*

DATE: March 13, 2006

SUBJECT: Required Action of the Originating and Non-originating House When a Bill is Vetoed Before Adjournment Sine Die

Queries

1. When the governor vetoes a bill and returns it to the originating house before adjournment sine die, are the originating and non-originating houses required to reconsider the bill?
2. If the non-originating house is required to reconsider a bill, but does not, what are the legal remedies available to enforce this requirement?

Short Answer

1. The Utah Constitution requires the originating house to reconsider a bill that is vetoed and returned to the originating house before adjournment sine die. Though the Utah Constitution implies that the non-originating house must also reconsider the vetoed bill, it does not do so expressly. Thus, it is unclear whether the non-originating house is constitutionally required to reconsider the bill.
2. The remedy to force a political body to fulfill a constitutional obligation is to petition a court for extraordinary relief (which replaces the common law method of seeking a writ of mandamus). Absent a clear constitutional mandate requiring the non-originating house to act, however, it is unlikely that a court would grant the petition. To do so may constitute a violation of the separation of powers. Even if a court is willing to grant the petition, the court would have to take action before adjournment sine die, because the constitution does not allow a bill that is vetoed and returned to the originating house before adjournment sine die to be reconsidered after adjournment. However, since it is possible that the non-originating house could take action of its own volition, up until adjournment sine die, a court would not be in a position to mandate action. And, after adjournment sine die, the issue is moot. Therefore, no legal remedy is available.

Analysis

When a bill is vetoed before the Legislature adjourns sine die, the Utah Constitution provides that the bill:

... shall be returned with the governor's objections to the house in which it originated. That house shall then enter the objections upon its journal and proceed to reconsider the bill. If upon reconsideration the bill passes both houses by a ye or nay vote of two-thirds of the members elected to each house, it shall become a law.

Utah Constitution Article VII, Section 8(1).

This provision of the constitution requires the originating house to reconsider a bill that is vetoed by the governor and returned to the originating house before adjournment sine die. However, the constitution does not clearly state whether the non-originating house is actually required to reconsider the bill. There are valid arguments on both sides of this issue. One argument is that, though such a requirement is not expressly stated, it is implicit in the context of the language. The phrase "[i]f upon reconsideration the bill passes both houses" seems to imply that the bill is actually reconsidered by both houses. *Id.* Additionally, since the house of origin is constitutionally required to reconsider the bill, it is logical that the non-originating house would be subject to the same requirement.

However, an equally valid argument may be made that the constitution provides for, but does not require, the non-originating house to reconsider the bill. The constitution clearly mandates reconsideration by the originating house, after a bill is returned with the governor's objections, by providing that the originating house "... shall then enter the objections upon its journal and proceed to reconsider the bill." *Id.* A similar mandate on the non-originating house is conspicuously absent. The fact that the constitution expressly requires the originating house to reconsider the bill, but only implies reconsideration by the non-originating house, calls into question whether the drafters intended to make reconsideration by the non-originating house mandatory. Thus, a literal reading of the Utah Constitution supports the position that the non-originating house has the discretion to determine whether to reconsider a bill that is vetoed before adjournment sine die.¹

¹ The United States Constitution, and the constitutions of some states, affirmatively require both the originating and non-originating house to reconsider a vetoed bill (for example, see Alabama Constitution, Article V, §125; Arkansas Constitution, Article 6, §15; Colorado Constitution, Article IV, §11; Idaho Constitution, Article IV, §10; and Kansas Constitution, Article 2, §14). However, other states, like Utah, are silent on the issue of whether the non-originating house is required to reconsider a vetoed bill (for example, see Arizona Constitution, Article V, §7; California Constitution, Article IV, §10; and Iowa Constitution, Article III, §16). At least one state expressly grants the non-originating house the discretion to not consider a vetoed bill (Florida Constitution, Article III, §8).

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Legislative Joint Rule 2-2-101, addressing the veto override process, similarly lacks a requirement that the non-originating house actually reconsider the bill. The rule provides that the bill "shall be reconsidered first in the house of origin of the bill." *Joint Rule 2-2-101(1), February 3, 2006*. If the bill passes the originating house by a constitutional two-thirds of the members of that house, the rule then requires that the bill "be sent to the other house, together with the Governor's objections." *Joint Rule 2-2-101(3), February 3, 2006*. The rule parallels the Utah Constitution in providing that the bill becomes law if both houses approve the bill by a constitutional two-thirds of the members of each house, but does not state that the non-originating house is actually required to reconsider the bill.

Regardless of which of the foregoing constitutional interpretations is correct, there is not a viable remedy to force the non-originating house to reconsider a bill. If a government official or body fails to fulfill a constitutional duty, the appropriate remedy is to file a petition for extraordinary relief under Rule 65B(c) of the Utah Rules of Civil Procedure. This procedure replaces the prior procedure of filing a writ of mandamus. While the current version of the rule does not specify the standard that a court should apply in determining whether to grant a petition for extraordinary relief, the advisory committee note explains that the purpose in drafting paragraph (c) of Rule 65B of the Utah Rules of Civil Procedure "was to simplify and clarify the requirements of the preexisting paragraph." *Rule 65B, Utah Rules of Civil Procedure, Advisory Committee Note*. The preexisting paragraph provided for the granting of a petition for extraordinary relief "to compel any inferior tribunal, or any corporation, board or person to perform an act which the law specially enjoins as a duty resulting from an office, trust, or station." *Rule 65B(b)(3), Utah Rules of Civil Procedure*. It is likely that a court would apply the same or a similar test under the current version of the rule.

As discussed previously, while the Utah Constitution specially requires that the originating house reconsider a bill that is vetoed before adjournment sine die, the constitution does not specially require the non-originating house to reconsider the bill. Thus, a court applying the standard in the preexisting version of Rule 65B, Utah Rules of Civil Procedure, would likely refuse to grant a petition for extraordinary relief to compel the non-originating house to reconsider a vetoed bill, when the constitution is not specific as to this duty.

Even if the standard from the preexisting version of Rule 65B, Utah Rules of Civil Procedure does not apply, it is unlikely that a court would grant a petition for extraordinary relief to compel the non-originating house to reconsider a vetoed bill. A writ of mandamus, which has been replaced, by rule, with a petition for extraordinary relief, is an "[e]xtraordinary writ which lies to compel performance of ministerial act or mandatory duty where there is a clear legal right in plaintiff, a corresponding duty in defendant, and a want of any other appropriate and adequate remedy." *Black's Law Dictionary, Abridged Sixth Edition, 1991*. While in the present circumstance a petition for extraordinary relief is the only appropriate or adequate remedy, there is not a clear legal right, nor a corresponding duty, expressed in the Utah Constitution that the granting of a petition for extraordinary relief could enforce. Moreover, based on the lack of a clear constitutional obligation for the non-originating house to reconsider a vetoed bill, the granting of a petition for extraordinary relief may constitute a violation of the separation of

powers. Finally, a court would not know whether the non-originating house failed to reconsider a bill until that house actually adjourned sine die, because the non-originating house could choose to reconsider the bill up to the time of adjournment.

It is also important to note that the remedy of a petition for extraordinary relief becomes moot after the Legislature adjourns sine die. The Utah Constitution does not allow for a bill that is vetoed and returned to the originating house before adjournment sine die to be reconsidered after adjournment. Rather, the Utah Constitution expressly limits the convening of a veto override session to circumstances where ". . . the governor disapproves any bill or item of appropriation after the adjournment sine die of any session of the Legislature . . ." *Utah Constitution, Article VII, Section 8(4) (emphasis added)*. Thus, a petition for extraordinary relief would need to be filed, granted, and acted upon by the non-originating house before adjournment sine die. An order compelling the non-originating house to reconsider such a bill after adjournment sine die would require convening the house at a time not allowed under the Utah Constitution.

Conclusion

The Utah Constitution requires the originating house to reconsider a bill that is vetoed and returned to the originating house before adjournment sine die. The Utah Constitution implies, but does not mandate, a similar duty upon the non-originating house. Absent a clear constitutional mandate, it is unlikely that a court would grant a petition for extraordinary relief to compel the non-originating house to reconsider the bill. A court order that compelled such action would likely violate the separation of powers. Finally, the issue is moot after adjournment sine die, because the constitution does not allow a bill that is vetoed and returned to the originating house before adjournment sine die to be reconsidered after adjournment.

Recommendation

It is evident that the constitutional powers and responsibilities of the Legislature in relation to the veto override process are ambiguous in some respects. It is the recommendation of the Office of Legislative Research and General Counsel that Article VII, Section 8, of the Utah Constitution be referred to the Utah Constitutional Review Commission for study to determine whether changes or clarifications are needed. Issues for study could include the following:

1. Whether the originating house should have discretion to reconsider a vetoed bill while the Legislature is in general session.
2. If the originating house is required to reconsider a bill that is vetoed while the Legislature is in general session, should the non-originating house be subject to the same requirement?
3. Whether the Legislature should have the option of postponing reconsideration of a bill that is vetoed during the general session until after the governor has taken final action on all general session bills.