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## Effective Date of Laws, 11 J. Marshall J. Prac. & Proc. 363 (1978)

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# EFFECTIVE DATE OF LAWS

GERALD GHERARDINI\*

*"... no man's life, liberty, or property is safe while the Legislature is in session."\*\**

This oft-quoted libel of the legislative branch of government arose in a case in which an attorney was held liable for negligence for giving a client advice based on a statute which, unknown to him, had been amended by the New York legislature. In Illinois, this warning should read: "no man's life, liberty, or property is safe unless his attorney pays attention to what is happening in Springfield."

No attorney can give a client advice on statutory law unless he knows whether or not there has been a recent change in the law, the nature of that change, and when that change becomes effective. The Sixth Illinois Constitutional Convention hoped that article IV, section 10 of the Illinois Constitution of 1970 would make it easier for attorneys and the public to determine what the changes in the law are and when they become effective.

## FUNCTION OF THE ILLINOIS LEGISLATURE IN RELATION TO THE EFFECTIVE DATE OF LAWS PROVISION

The Illinois General Assembly meets during the first six months of each year, adjourning on or near June 30.<sup>1</sup> The legislature must transmit passed bills to the Governor within thirty calendar days of passage,<sup>2</sup> and the Governor must sign or veto such bills within sixty days of receiving them.<sup>3</sup> When the Governor files a signed bill with the office of the Secretary of State, it becomes a law immediately, but it does not necessarily become effective at the same time. When a law actually takes effect depends on either the terms of the bill itself, or when and by what vote it was passed in the General Assembly. Article IV, section 10 of the 1970 Illinois Constitution provides that a bill passed prior to July 1 of a calendar year becomes effective on

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\*\* 1 Tucker 247 (N.Y. Surr. 1866).

1. ILL. CONST. art. IV, § 5(a): "The General Assembly shall convene each year on the second Wednesday of January."

2. *Id.* § 9(a).

3. *Id.* § 9(b). If he does neither, a bill becomes law automatically on the 60th day after he receives it.

the uniform effective date specified by the General Assembly, or according to the terms of the bill itself. But a bill passed after June 30 of a calendar year cannot become effective prior to July 1 of the next calendar year unless an earlier effective date is specified in the bill by a three-fifths vote of the members of the General Assembly.<sup>4</sup>

In 1971, the General Assembly established October 1 as the uniform effective date for bills passed prior to July 1.<sup>5</sup> Effective

4. *Id.* § 10:

The General Assembly shall provide by law for a uniform effective date for laws passed prior to July 1 of a calendar year. The General Assembly may provide for a different effective date in any law passed prior to July 1. A bill passed after June 30 shall not become effective prior to July 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.

5. ILL. REV. STAT. ch. 131, § 21 (1971), added by Pub. Act 77-147 § 1, 1971 Ill. Laws vol. I at 274, effective July 2, 1971, provided:

A law passed prior to July 1 of a calendar year and after June 30, 1971, shall become effective on October 1 following its becoming a law unless by its terms it specifically provides for a different effective date. A law passed prior to July 1, 1971, shall become effective on July 1, 1971, or upon its becoming a law, whichever is later, unless such law by its terms specifically provides for a different effective date.

In 1973, section 21 was amended and sections 22 through 26 were added by Pub. Act 78-85 §§ 1-6, 1973 Ill. Laws vol. I at 196, making the effective date law in its entirety read:

21. Effective dates of laws. (a) A bill passed prior to July 1 of a calendar year that does not provide for an effective date in the terms of the bill shall become effective on October 1 of that year if October 1 is the same as or subsequent to the date the bill becomes a law; provided that if October 1 is prior to the date the bill becomes a law then the date the bill becomes a law shall be the effective date.

(b) A bill passed prior to July 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.

22. Special effective dates. A bill passed after June 30 of a calendar year shall become effective on July 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.

23. "Passed" construed. 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.

24. "Bill" defined. As used in this Act, "bill" includes an item of appropriations contained in a bill, and "terms of the bill" includes effective date provisions of a bill which are applicable to items of appropriations contained in the bill.

25. "Becomes a law" construed. A bill "becomes a law" pursuant to Sections 8 and 9 of Article IV of the Constitution.

26. "Constitution" defined. As used in this Act "Constitution" means the Constitution of the State of Illinois of 1970.

January 1, 1978, the General Assembly has changed the uniform effective date from October 1 to January 1 of the next calendar year.<sup>6</sup>

A bill becomes law in Illinois upon the date or occurrence of any one of the following events: (1) the signing of the bill by the Governor;<sup>7</sup> (2) the overriding of a veto by the General Assembly;<sup>8</sup> (3) the certification by the Governor that the General Assembly has accepted his suggested amendments;<sup>9</sup> or (4) upon the failure of the Governor to sign or veto a bill within sixty days after receipt.<sup>10</sup> If any of these events takes place after the uniform effective date or after the effective date specified in the bill, the law becomes effective on the date of the event.<sup>11</sup> Otherwise, it becomes effective on January 1 of the next calendar year, July 1 of the next calendar year, or the date specified in the bill (see Table 1). Amendatory vetoes are listed separately because the date on which the General Assembly adopts the Governor's suggested changes in a bill is the date on which the bill has "passed" the General Assembly.<sup>12</sup>

### *The Uniform Delayed Effective Date*

The purpose of having a uniform delayed effective date for legislation is to provide the public and attorneys with a single date on which most legislation becomes effective, thereby eliminating the need for the constant monitoring of activity in Springfield. The delay serves to provide sufficient time so that the exact text of the legislation can be made available to those who may be affected by it.<sup>13</sup>

At the time of the Sixth Illinois Constitutional Convention,

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6. In 1977, section 21(a) was amended by Pub. Act 80-1036, 1977 Ill. Laws vol. — at —, effective January 1, 1978, to read:

A bill passed prior to July 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.

(Table 1 indicates the effective date of a law based on its passage date (either before or after July 1), whether an effective date is specified, and the vote by which the bill passes.)

7. ILL. CONST. art. IV, § 9(a) (1970).

8. *Id.* § 9(c).

9. *Id.* § 9(e).

10. *Id.* § 9(b).

11. ILL. REV. STAT. ch. 131, § 21 (1975).

12. *Klinger v. Howlett*, 50 Ill. 2d 242, 278 N.E.2d 84 (1972). In *Klinger*, the court adopted the opinion of the court in *Board of Educ. v. Morgan*, 316 Ill. 143, 147 N.E. 34 (1925), as to when a bill passed, stating "the last act of the legislature which permitted the Governor to make the bills become law by his acceptance was the vote of the houses of the general assembly which approved the Governor's changes in the bills." *Id.* at 247, 278 N.E.2d at 87.

13. 6 RECORD OF PROCEEDINGS, SIXTH ILL. CONSTITUTIONAL CONVENTION, at 1390-91 (1969-70) [hereinafter cited as PROCEEDINGS].

eighteen state constitutions provided that a public act became effective at a stated length of time after the end of the session of the legislature at which it was passed.<sup>14</sup> Most of these state constitutions provided a time period of ninety days after the end of the legislative session as the effective date of laws.<sup>15</sup> However, other states specified time periods of sixty days,<sup>16</sup> twenty days,<sup>17</sup> or three months.<sup>18</sup> Six states based the effective date on a stated length of time after the individual bill was passed by the legislature—this period of time being either forty, sixty, or ninety days.<sup>19</sup> Four states specified a particular day and month after passage of a bill as the effective date—three specifying July 1,<sup>20</sup> and one specifying June 1.<sup>21</sup> Four states provided no time period but stated that a law became effective when published according to law.<sup>22</sup>

Twenty-eight states provided for exceptions to the normal delay in the effective date, usually in the case of "emergency" and usually requiring the approval of an extraordinary majority of the states' legislatures.<sup>23</sup> Twelve states exempted appropriations bills from the delay in effective dates provision.<sup>24</sup> Eighteen states and the United States Constitution made no provision for the effective date of legislation.<sup>25</sup> The Model State Constitution, a sample document published by the National Municipal League, simply suggests that "no act shall become effective until published as provided by law."<sup>26</sup> From this it can be seen that the

14. *Id.*, Schedule B, at 1405-08.

15. ARIZ. CONST. art. IV, pt. 1, § 1(3); CAL. CONST. art. IV, § 8(c); KY. CONST. § 55; ME. CONST. art. IV, pt. 3, § 16; MICH. CONST. art. IV, § 27; MO. CONST. art. III, § 29; N.M. CONST. art. IV, § 23; OKLA. CONST. art. V, § 58; ORE. CONST. art. IV, § 1; S.D. CONST. art. III, § 22; TEX. CONST. art. III, § 39; VA. CONST. art. IV, § 53; and WASH. CONST. art. II, § 1(c).

16. FLA. CONST. art. III, § 18; IDAHO CONST. art. III, § 22; UTAH CONST. art. VI, § 25.

17. LA. CONST. art. III, § 27.

18. NEB. CONST. art. III, § 27.

19. ALAS. CONST. art. II, § 18 (90 days); MASS. CONST. amend. art. 48 (90 days); MISS. CONST. art. IV, § 75 (60 days); OHIO CONST. art. II, § 1(c) (90 days); TENN. CONST. art. II, § 20 (40 days); and W. VA. CONST. art. VI, § 30 (90 days).

20. ILL. CONST. art. IV, § 13; IOWA CONST. art. III, § 26; N.D. CONST. art. II, § 67.

21. MD. CONST. art. III, § 31; art. XVI, § 2.

22. COLO. CONST. art. V, § 19; IND. CONST. art. IV, § 28; KAN. CONST. art. II, § 19; WIS. CONST. art. VII, § 21.

23. Four-fifths of members voting, Va.; two-thirds of members elected, Alas., Ariz., Cal., § 8(d), Ill., Me., Mass., Mich., Mo., Neb., N.M., Ohio, § 1(d), Okla., S.D., Tex., Utah, W. Va.; two-thirds of members present and voting, N.D.; three-fifths of members elected, Md.; majority of members elected, Ky.

24. Ariz., Cal., Ky., La., Me., Mo., N.M., Ohio, Okla., Tex., Va., and Wash.

25. All the rest.

26. MODEL STATE CONSTITUTION, National Municipal League, § 4.15 (6th ed. revised 1968).

Sixth Illinois Constitutional Convention was presented with a variety of alternatives in designating an effective date of laws provision.

#### HISTORY OF THE EFFECTIVE DATE OF LAWS PROVISION IN ILLINOIS

The first Illinois constitution, written in 1818, made no provision for the effective date of laws. The 1848 constitution provided that "no act of the general assembly shall take effect or be in force until the expiration of sixty days from the end of the session at which the same may be passed, unless in case of emergency the general assembly shall direct otherwise."<sup>27</sup> Subsequently, the 1869 Constitutional Convention placed a greater restriction on the General Assembly's power to decide when a bill became effective. The constitution adopted in 1870 contained the following provision:

[N]o act of the general assembly shall take effect until the first day of July next after its passage, unless, in case of emergency (which emergency shall be expressed in the preamble or body of the act), the general assembly shall by a vote of two-thirds of all the members elected to each house, otherwise direct.<sup>28</sup>

Whether it was intended or not, this provision forced the regular session of the General Assembly to adjourn on June 30th, the day before the general effective date of laws. It is this provision, then, that is credited with causing the infamous legislative "logjams" in June of each year and the "stop the clock" antics on the night of June 30th,<sup>29</sup> both of which have subjected the General Assembly to public ridicule. The logjams occurred because each faction knew that bills had to be passed by June 30 and thus used this fact as a means of leverage in the final days of the session. Stopping the clock, a biennial ritual much recorded by the press, occurred because the legislative journals had to show that the bills passed by June 30, even though to the outside world it appeared that the bills passed on July 1 or later. The Illinois Supreme Court, using the "journal entry rule," would hold the journals to be conclusive as to the date of passage and would not consider evidence tending to contradict them.<sup>30</sup>

Another interesting aspect of the 1870 Illinois Constitution

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27. ILL. CONST. art. III, § 23 (1848).

28. ILL. CONST. art. IV, § 13 (1870).

29. D. BRADEN & R. COHN, *THE ILLINOIS CONSTITUTION: AN ANNOTATED AND COMPARATIVE ANALYSIS* 167 (Urbana: Institute of Government and Public Affairs, University of Illinois Press 1969).

30. *E.g.*, *Neiberger v. McCullough*, 253 Ill. 312, 97 N.E. 660 (1912).

involved the construction of the word "passage." By interpreting the word to refer to the time of the last legislative action and not to include the action of the Governor, the Illinois Supreme Court held that a bill became effective on July 1 or when it became law, whichever occurred later.<sup>31</sup> The General Assembly usually adjourned by July 1, and the Governor spent the next three to four months signing or vetoing bills.<sup>32</sup> Therefore, because most bill-signing took place after July 1, almost all bills became effective the day they were signed. Even though the Governor had only ten days to sign or veto a bill after it was presented to him by the legislature,<sup>33</sup> there was no time limit on how long the General Assembly could take to send the bill to the Governor after its passage. The General Assembly would pace its delivery of the bills to the Governor over the summer, often at his request, allowing him time to give the bills reasonable consideration.

As a result, in 1969, the year of the last full legislative session before the convening of the Sixth Illinois Constitutional Convention, laws became effective on eighty-seven different days between March 19 and October 23, in addition to three delayed dates in 1970 and one in 1971.<sup>34</sup> Of those bills which became effective in 1969, very few became effective before July 1, 1969, and most of those which did were supplementary appropriation bills and other bills with an emergency designation. Not surprisingly, July 1, the uniform effective date, was the single day when most bills became effective, comprising 14.9% of the total. However, over two-thirds of the bills which became effective on July 1, 1969, were appropriations bills. The ninety-three other bills which became effective on that date represented only 5.9% of the total nonappropriations bills enacted in 1969, which are the bills that the public and attorneys are most concerned with. The date when the largest number of nonappropriations bills became effective was September 22, 1969, when 156 such bills became effective, representing nearly 10% of the total. As can be seen from Table 2, laws became effective in smatterings and handfuls over a period of eight months, with no date being of any particular significance relative to other dates, except for July 1, 1969, with respect to appropriations bills. The net result of this random process was to impose on practicing attorneys the burden of con-

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31. *Board of Educ. v. Morgan*, 316 Ill. 143, 147 N.E. 34 (1925).

32. For example, in 1969, the General Assembly adjourned on June 30 and the Governor finished signing bills on October 23, 1969. See Table 2.

33. ILL. CONST. art. V, § 16 (1870).

34. Table 2 summarizes the effective dates of legislation in 1969, Public Acts 76-1 through 76-1965 inclusive. For an analysis of the 1965 Illinois session laws to establish percentages of effective dates in 1965 compared to the percentages of effective dates of laws in 1975, see Table 4.

tacting their individual sources in Springfield to discover if the Governor had signed a particular piece of legislation in which they were interested.

### *The Sixth Illinois Constitutional Convention*

When the Sixth Illinois Constitutional Convention met in Springfield in December of 1969, it faced many issues of greater importance than the uniform effective date of laws. Of the 583 delegate proposals introduced at the convention, only five made reference to the effective date of laws.<sup>35</sup> These proposals were referred to the Committee on the Legislature which reported a proposal to the convention combining the purposes of uniformity, delay, and reform in the adjournment procedure of the General Assembly. The committee proposal provided that the General Assembly would be allowed to establish a uniform effective date for bills passed before July 1; that no law passed after June 30 could become effective before the uniform effective date of the next year, unless provided otherwise by a three-fifths vote of the members of each house; and that all laws had to be published thirty days before their effective date, unless provided otherwise by a three-fifths vote of the members of each house.<sup>36</sup>

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35. *Sixth Illinois Constitutional Convention, Legislative Committee Report: An Appendix, Legislative Article: Comparative Information, Synopsis of Member Proposals on the Legislative Article.* Proposal No. 45 (Delegate John L. Knuppel) proposed that no act passed before July 1 could become effective until January 1 of the following year, and that no act passed after July 1 could take effect until July 1 of the next year, with exceptions for appropriations bills and emergencies. Proposal No. 51 (Delegate Dwight P. Friedrich) provided that no law could take effect until six months after it became a law, emergency legislation excepted and July 1 retained for appropriations bills. Proposal No. 117 (Delegate David Linn) changed the basic general effective date to October 1, but retained July 1 for appropriations bills and provided that no act could be passed after June 30 except at a special session. Proposal No. 201 (Delegate Louis J. Perona) proposed that no law, except emergency legislation, could become effective sooner than 20 days after its publication in an official code of laws of the State of Illinois. Proposal No. 365 (Delegate David Kenney) provided that bills should be published within 60 days after passage and that acts should become effective 90 days after they were approved by the Governor, or, if neither signed nor vetoed, 100 days after presented to the Governor; the proposal included a special procedure for emergency bills. 7 PROCEEDINGS, *supra* note 13, at 2869, 2871, 2896, 2930 and 3000, respectively.

36. 6 PROCEEDINGS, *supra* note 13, at 1390. The text of the committee proposal was as follows:

The General Assembly shall provide for a uniform effective date for laws. The General Assembly by a majority of all members of each house may provide for another effective date in a bill enacted before July 1. No law enacted after June 30 of a year shall become effective until the uniform effective date of the next calendar year unless three-fifths of all members of each house provides for another effective date. All laws other than revenue or appropriation laws, shall be published, as provided by law, at least 30 days before their effective date. Three-fifths of all the members of each house may provide in a bill for an effective date prior to publication or earlier than 30 days after publication.



As explained by the committee, the purpose of this section was threefold: (1) to establish a uniform effective date so that the legal community and public could have reasonable notice of when the General Assembly's work product took effect; (2) to provide the legal community and the public with proper notice of a law's content through publication in advance of the effective date; and (3) to encourage the General Assembly to conclude its proceedings during the first half of each year.<sup>37</sup>

This section of the committee proposal was presented to the convention by Committee Chairman George A. Lewis,<sup>38</sup> and after a confusing discussion, generated basically by the use of conflicting terms,<sup>39</sup> the proposal was amended to delete the publication requirements. Delegate William L. Fay, who proposed the amendment, contended that this requirement would be costly and would probably not serve its intended purpose because the General Assembly would probably require only newspaper publication in an officially designated newspaper.<sup>40</sup> In opposition to the argument that a lawyer should have a copy of a law on his desk before his clients could be expected to obey it, Delegate Fay contended that the bar associations publish digests of bills enacted very soon after adjournment, and that the new statute books are published very expeditiously.<sup>41</sup> His amendment was adopted.<sup>42</sup>

Most of the debate on the effective date of laws at the convention was clearly centered on the forced adjournment of the General Assembly, probably indicating a general belief on the part of those at the convention that no man's life, liberty, or property was safe while the General Assembly was in session. However, there was an attempt to eliminate the requirement of a three-fifths vote after June 30 to make a bill effective before the uniform effective date of the next year—a direct assault on the proposal for forced adjournment of the General Assembly by July 1.<sup>43</sup> Delegate William A. Sommerschild argued that this restriction made the legislative branch inferior to the executive and judicial branches, which operate yearround. In addition, he

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37. *Id.* at 1390-91.

38. 4 *id.* at 2701-05, 2886-88.

39. *Id.* at 2303-05. For example, Delegate Lewis explained that the committee intended "bill enacted" and "law enacted" to mean the same thing. *Id.*

40. *Id.* at 2899.

41. *Id.* at 2900. The Illinois State Bar Association version of the Illinois Revised Statutes (1975) was published in December of that year, more than six months after adjournment. The Illinois Legislative Service printed by West Publishing Co. provides copies of public acts from between one month to two and one half months after the governor has signed them.

42. *Id.*

43. *Id.* at 2901.

contended that the General Assembly could be trusted to be responsible.<sup>44</sup> In any event, fear of a continuous General Assembly won the day. Historically, the General Assembly had adjourned *sine die* on June 30th in odd numbered years, not meeting in the fall to consider the Governor's vetoes and not meeting at all in the even numbered years. However, the General Assembly had recently begun to meet annually,<sup>45</sup> and was meeting at the same time as the Constitutional Convention in 1970. Delegate Dwight P. Friedrich raised the specter of a General Assembly "in business just like the Congress, the year-round; and the public will be at the mercy of them."<sup>46</sup> No delegate suggested that there might be other ways to force the General Assembly to adjourn besides complicating the uniformity and delay purposes of the effective date provisions. Delegate Louis J. Perona noted, however, that the only reason that the Constitutional Convention itself would adjourn on time was because the delegates' per diem expense allowance was limited to one hundred session days.<sup>47</sup> Thus, not surprisingly, the Sommerschield amendment was defeated,<sup>48</sup> and the forced adjournment provision survived.

The convention offered two other amendments worthy of note. One amendment insured that the three-fifths vote requirements were based on all members *elected* to each house.<sup>49</sup> The other amendment changed the delayed effective date for bills passed after June 30 from "the uniform effective date of the next calendar year" to "July 1 of the next calendar year." This was intended to eliminate the possibility of a gap of up to eighteen months occurring if the General Assembly chose January 1 as the uniform effective date.<sup>50</sup> The provision finally adopted was the version which emerged from the Committee on Style, Drafting and Submission.<sup>51</sup> This provision was not debated on the second reading of the legislative article; however, on the third reading one final amendment was proposed by Delegate Wayne Whalen, the Chairman of the Committee on Style, Drafting and Submission. Delegate Whalen's amendment would have

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44. *Id.*

45. Annual sessions began as the result of the 1967 report of the ILLINOIS COMMISSION ON THE ORGANIZATION OF THE GENERAL ASSEMBLY, *Improving the State Legislature* (University of Illinois Press, 1967).

46. 4 PROCEEDINGS, *supra* note 13, at 2902.

47. *Id.* at 2902-03. The General Assembly members did not receive a per diem allowance at the time of the convention, but they currently receive a per diem allowance of \$36 for each session day with no limit on the number of days. See ILL. REV. STAT. ch. 63, § 14 (1975).

48. 4 PROCEEDINGS, *supra* note 13, at 2905.

49. *Id.* at 2905-08 (proposal of Delegate Paul F. Elward).

50. *Id.* at 2980-89 (proposal of Delegate John L. Knuppel).

51. 6 *id.* at 1503.

changed the delayed effective date for bills passed after June 30 from "July 1 of the next calendar year" to "January 1 of the next calendar year."<sup>52</sup> This amendment was proposed to "remove the situation where a law passed in one session of the General Assembly would require a three-fifths majority to become effective earlier than a law passed by a majority in a later session." However, because the convention members assumed that the General Assembly would choose a uniform effective date between October 1 and January 1, they viewed this amendment as seriously weakening the incentive for a July 1 adjournment and defeated it.<sup>53</sup>

### *The Legislative Response*

The Illinois Constitution of 1970 was adopted in a special election on December 15, 1970, and most provisions, including the effective date provision, went into effect on July 1, 1971.<sup>54</sup> Because the spring, 1971 session of the General Assembly was conducted under the Illinois Constitution of 1870, and probably because the General Assembly was not totally prepared, the 1971 effective date law provided, in part, that any bill passed prior to July 1, 1971, would become effective on July 1, 1971, or when it became law, whichever was later. This continued the practice under the old constitution.<sup>55</sup> The law further provided that October 1 would be the uniform effective date for 1972 and subsequent years,<sup>56</sup> this date being the earliest practical uniform effective date that the General Assembly could have chosen. Although this law provides for uniformity, it does not realistically allow sufficient time for the legal community or the public to become familiar with the text of a new law.

The new constitution provides that the General Assembly has thirty days to send a bill to the Governor after it is passed, and the Governor has sixty days to sign or veto it.<sup>57</sup> A bill passed on June 30 could, therefore, be signed as late as September 28, only two days before it would become effective. A recent example of the hardship that this sometimes causes is reflected in the 1977 codification of the Illinois law on marriage, divorce, and child custody. This law was passed by the General Assembly on June 30, 1977, and was signed into law on September 23, 1977, only one week before it became effective.<sup>58</sup> By its terms, the law

52. 5 *id.* at 4312-13.

53. *Id.* at 4313.

54. ILL. CONST. Transition Schedule, §§ 1, 10 (1970).

55. ILL. REV. STAT. ch. 131, § 21 (1971). See note 5 *supra*.

56. See note 5 *supra*.

57. See note 7 *supra*. This is a drastic change from the 1870 constitution, as discussed in text accompanying notes 28-34 *supra*.

58. Illinois Marriage and Dissolution of Marriage Act, Pub. Act 80-

"applies to all pending actions and proceedings commenced prior to the effective date with respect to issues on which a judgment has not been entered." In addition, evidence considered after October 1, 1977, has to be in compliance with the new law.<sup>59</sup>

*The Amendatory Veto and the Effective Date  
of Laws Provision*

The most complicated aspect of the effective date of laws provision, causing even more consternation than the lack of sufficient delay between a bill's signing and its effective date, is the effective date of bills over which the Governor has exercised his amendatory veto power. The most significant change made in the Governor's veto powers by the 1970 Illinois Constitution was the inclusion of the power to "return a bill together with specific recommendation for change to the house in which it originated."<sup>60</sup> The General Assembly can accept those changes by a vote of the majority of the members elected to each house, or can override the veto by a three-fifths vote in each house.<sup>61</sup>

The scope of this power has been the subject of much controversy in and of itself.<sup>62</sup> Significantly, it has seriously complicated the original simple scheme of the effective date provisions of the 1970 constitution. This problem is exemplified by three bills dealing with financial assistance to non-public schools that were passed by the General Assembly on June 22, 1971.<sup>63</sup> On June 28, 1971, the United States Supreme Court held invalid a series of state non-public school aid laws upon which the Illinois legislation had been based.<sup>64</sup> On September 10, 1971, then Governor Richard Ogilvie returned the bills to the Senate with his recommended changes to conform the bills to the Supreme Court's decisions. The Senate accepted the recommendations, the House concurred on October 28, 1971, and the Governor certified

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923, 1977 Ill. Laws vol. — at —, 1977 Legislative Synopsis and Digest at 529-32.

59. Pub. Act 80-923 § 801, 1977 Ill. Laws vol. — at —.

60. ILL. CONST. art. IV, § 9(e). For a full discussion of the amendatory veto power see Comment, *The Illinois Amendatory Veto*, 11 J. MAR. J. 415 (1977-78).

61. ILL. CONST. art. IV, § 9(e).

62. There was an unsuccessful attempt to amend the constitution in 1974 to limit the amendatory veto to technical errors and matters of form. It failed by the vote of 1,302,313 yes; 1,329,719 no. See House Joint Resolution, Constitutional Amendment No. 7, 1973; Official Vote, General Election, Nov. 5, 1974, Illinois State Board of Elections at 21-22. See also Friedrich, *Should the Amendatory Veto Power be Curbed?*, 3 ILLINOIS ISSUES 10 (Sept. 1977); Comment, *The Illinois Amendatory Veto*, 11 J. MAR. J. 415 (1977-78).

63. Senate Bills 1195, 1196, and 1197, 1971 Final Legislative Synopsis and Digest at 437-40.

64. *Tilton v. Richardson*, 403 U.S. 672 (1971); *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

the bills on the same day.<sup>65</sup> Based on the uniform effective date statute which stated that a bill "passed" prior to July 1, 1971, became effective on July 1, 1971, or upon becoming law, these bills would have become effective on October 28, 1971. However, in *Klinger v. Howlett* the Illinois Supreme Court held that the bills had been "passed" on October 28 and therefore would not become effective until July 1, 1972. The Illinois Supreme Court held that "passed" meant "the last legislative act necessary so that the bill would become law upon its acceptance by the Governor without further action by the legislature."<sup>66</sup> The court reasoned that:

the last act of the legislature which permitted the Governor to make the bills become law by his acceptance was the vote of the the houses of the General Assembly which approved the Governor's changes in the bills. For the purposes of section 10 of article IV, these bills were "passed" . . . when the House voted to accept the Governor's executive amendment after the Senate had already done so. Any other definition of the word "passed" which fixed an earlier time would require this court to rule that the bills were passed before the legislature ever considered them in their final form, indeed before they were written. Nothing in the Constitution of 1970 suggested that the word "passed" was used in such an artificial and abnormal sense.<sup>67</sup>

Artificial or not, the General Assembly had already passed a bill dealing with conflicts between two or more amendments to the same statute passed in the same session of the General Assembly.<sup>68</sup> Since the resolution of such conflicts might depend on the effective dates of the amendments, the bill stated that "a bill is 'passed' at the time of its final legislative action before presentation to the Governor as provided in paragraph (a) of Section 9 of Article IV of the Constitution" of 1970.<sup>69</sup> This refers to the initial presentation of a bill to the Governor, and does not refer to presenting it to him again after accepting his recommendations, as provided in paragraph (e) of section 9 of article IV. Because this law was not in effect on October 28, the court did not rule on this legislative definition of a term in the constitution.<sup>70</sup>

In 1972, the General Assembly passed a bill attempting to reconcile article IV, section 10 with *Klinger v. Howlett*, but Governor Ogilvie vetoed the bill. The bill defined "passed" as the

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65. See note 63 *supra*.

66. *Klinger v. Howlett*, 50 Ill. 2d 242, 278 N.E.2d 84 (1972).

67. *Id.* at 247-48, 278 N.E.2d at 87.

68. ILL. REV. STAT. ch. 131, § 4.2 (1975).

69. *Id.*

70. H.B. 3032 was also subjected to an amendatory veto and was not certified until November 17, 1973.

last constitutionally required action of the General Assembly before a bill became law. This would have included the overriding of vetoes, subjecting all vetoes to the confusion that amendatory vetoes created. The bill also provided that if the Governor's recommendations contained a provision for an early effective date, or if the bill as originally passed contained one, then a three-fifths vote was required to adopt the Governor's recommendations. This was more restrictive than the *Klinger* decision, under which the General Assembly could still adopt the Governor's recommendations by a majority vote. The bill could still become law, but any effective date provision in the bill purporting to make it effective prior to July 1 of the next calendar year would be ineffective. Governor Ogilvie vetoed the bill on the grounds that it was confusing and contradictory and it limited the Governor's amendatory veto power.<sup>71</sup> The legislature did not override the veto.

In 1973, in apparent frustration, the General Assembly passed a bill restating its definition of "passed" as the "final legislative action prior to presentation to the Governor pursuant to paragraph (a) of Section 9 of Article IV."<sup>72</sup> It apparently did so in the hope of tempting the court to reconsider its decision in *Klinger*, but the court has not yet had an opportunity to do so.

Although the court has not yet acted on this matter, the Attorney General has issued an opinion dealing with the effective date problem in reference to the death penalty bill passed in 1973.<sup>73</sup> This opinion demonstrated the life or death importance of the effective date provisions, an issue that is still alive because of a recent United States Supreme Court ruling that a person can be sentenced under a new death penalty law for a murder committed while a constitutionally invalid death penalty law was in effect.<sup>74</sup>

The death penalty bill originally passed the General Assembly on June 30, 1973, and was returned with specific recommendations for change on September 12. These recommendations were adopted by the General Assembly on October 22, and the Governor certified the bill on November 8, 1973.<sup>75</sup> The bill contained no effective date provision. According to statute, the

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71. H.B. 3743, 1972 Sess., Legislative Messages, Richard B. Ogilvie, at 98-99; House Journal Illinois, 77th Assembly, 1972 Sess. at 10979 (Sept. 7, 1972).

72. ILL. REV. STAT. ch. 131, § 23 (1975); Pub. Act 78-85, 1973 Ill. Laws vol. I at 196, effective July 13, 1973. See note 5 *supra*.

73. 1974 OP. ILL. ATTY. GEN. 119.

74. *Dobbert v. Florida*, 97 S. Ct. 2290 (1977).

75. H.B. 18, 1973 Final Legislative Synopsis and Digest at 28-29; Pub. Act 78-921, 1973 Ill. Laws vol. II at 2959.

bill became effective on November 8, 1973, but according to the *Klinger* decision it became effective on July 1, 1974. The Attorney General, however, could find no conflict between the statute and the *Klinger* decision. He stated that if the statute was capable of being construed consistently with the court decision in *Klinger*, then it should be. He then stated 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" encompassed 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; or (4) acceptance of the governor's specific recommendations for change."<sup>76</sup> In the Attorney General's opinion, therefore, the death penalty bill took effect on July 1, 1974, and the statute apparently in conflict was broad enough to include the adoption of an amendatory veto in its definition of "passed."<sup>77</sup>

#### THE EFFECT OF ARTICLE IV, SECTION 10 OF THE 1970 CONSTITUTION

In 1973, the year of the first complete session of the General Assembly operating under the new effective date provisions, the Governor signed 917 bills between March 26 and September 21.<sup>78</sup> The new timetable requiring the General Assembly to send bills to the Governor within thirty days of passage shortened by about one month the time necessary for the Governor to complete his consideration of the bills, even though the Governor was now given sixty rather than ten days to sign a bill after he received it. Laws became effective on forty-eight different days in 1973, and on four delayed days occurring in 1974. This is in contrast to the eighty-seven different days on which laws became effective in 1969. Furthermore, most nonappropriations bills became effective on October 1, 1973, when 512 laws became effective. This constituted 55.8% of all bills and 68.7% of the nonappropriations bills. The next busiest day was January 1, 1974, when only 6.7% of the total number of laws became effective. This indicates that October 1 had truly become a uniform effective date, much more so than under the 1870 Illinois Constitution when only 5.9% of the nonappropriations bills had become effective on July 1. The effective dates of these 917 laws are analyzed in Table 3.

A detailed examination of many of the bills signed in 1973

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76. 1974 OP. ILL. ATTY. GEN. 119.

77. *Id.*

78. 1973 ILL. LAWS vol. I at v-ix, vol. II at v-ix.

indicates that some confusion about effective dates existed. Many bills contained a standard section providing that the bill would become effective upon becoming a law, but there does not seem to be any indication, other than with respect to the appropriation bills, that these bills were more important than those which did not contain the provision. One bill contained the pre-1971 emergency clause.<sup>79</sup> Several bills provided that they were to become effective on the first day of the first full month after they became law, which worked out to be October 1 in most cases.<sup>80</sup> There was one piece of legislation which stated that it was to become effective three months after it became law, which worked out to be November 9.<sup>81</sup> There was also a series of bills, most of which were passed after June 30, which contained a notation that they were "EFFECTIVE IMMEDIATELY," but there is no indication in the journals that this notation was either part of the original bill or adopted as an amendment.<sup>82</sup> The "enrolled bill rule" in the new constitution probably excludes any court challenge as to exactly how these notations came to appear on the bills.<sup>83</sup>

The passage of two bills in 1973, dealing with abortion, also presents an interesting question as to the meaning of the requirement that a bill passed after June 30 cannot become effective before the next July 1, unless an earlier effective date is specified "by the votes of three-fifths of the members elected to each house." These two bills passed the Senate on May 29 and June 1, 1973, with thirty<sup>84</sup> and thirty-six<sup>85</sup> yes votes respectively (thirty-six votes being three-fifths of the Senate). Both bills passed the House on July 1, 1973, with yes votes of 107 and 111<sup>86</sup> respectively (107 votes being three-fifths of the House).<sup>87</sup> Both bills contained a section providing that they would be effective upon becoming law, both were signed on July 19, and presumably

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79. Pub. Act 78-178, § 2, 1973 Ill. Laws vol. I at 476.

80. Pub. Act. 78-666, § 2, 1973 Ill. Laws vol. II at 1976. This type of effective date is used in salary bills so that the effective date is at the beginning of a pay period, but it seems unnecessary if the uniform effective date is at the beginning of a month.

81. Pub. Act 78-241, § 2, 1973 Ill. Laws vol. I at 753.

82. See Pub. Acts 78-75, 128, 550, 1973 Ill. Laws vol. I. See also Pub. Acts 78-599, 625, 630, 651, 660, 807, 850, 856, 869, 871, 873, 879, 1973 Ill. Laws vol. II.

83. ILL. CONST. art. IV, § 8(d).

84. Senate Journal Illinois, 78th Assembly, 1973 Sess., at 1396-97 (May 29, 1973).

85. *Id.* at 1530 (June 1, 1973).

86. House Journal Illinois, 78th Assembly, 1973 Sess., at 5033 (July 1, 1973).

87. Senate Bills 1049 and 1050, Pub. Acts 78-225, 226, 1973 Ill. Laws vol. I, conformed Illinois law to the 1972 United States Supreme Court abortion decisions specifying when and where abortions could be performed. 1973 Final Legislative Synopsis and Digest at 507-08.



both became effective that day. The bills were never challenged, but it could be argued that they did not and could not have become effective until July 1, 1974.

#### CONCLUSION

In spite of the confusion, the new effective date of laws provision does seem to be fulfilling at least one of the three primary purposes intended for it, *i.e.*, to establish a uniform effective date so that the legal community and the public have reasonable notice of when the General Assembly's work product becomes effective. Most appropriations bills become effective at the beginning of the fiscal year, and two-thirds of the nonappropriations bills become effective on the legislatively established effective date, which was October 1 and is now January 1.

The second purpose, to provide the legal community and the public with an opportunity to discover the content of a law well in advance of the effective date, was seriously weakened by the elimination of the proposed publication requirements at the constitutional convention and the adoption of the October 1 effective date by the General Assembly. The recent adoption of January 1 as the effective date should ease this situation because there will be a gap of over three months between late September, when the Governor finishes his consideration of bills, and the uniform effective date.

The third purpose of the effective date provision, to force the General Assembly to adjourn by July 1, has not been completely successful. The "stop the clock" tradition on June 30 has been eliminated so that the journals now reflect the true adjournment time. The General Assembly adjourned on July 1 in 1976, and on July 2 in both 1973 and 1977.<sup>88</sup> In 1974, however, the General Assembly became so entangled with a few key appropriations issues, chiefly the so-called "Attorney General's amendments," that it did not adjourn until July 12, and the Senate had to be called back into special session to recede from an amendment which the House would not accept.<sup>89</sup> Similarly, in 1976, deadlocks over the Regional Transportation Authority and the Capital Development Board required a special session on July 9 to pass two bills.<sup>90</sup> Though the General Assembly could probably manage to create its own deadlocks, the three-fifths requirement for the passage of legislation after June 30 contributes to the

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88. These events are recorded in the House and Senate Journals on the dates specified.

89. See also Cohn, *Attorney General and Governor fight over control of lawyers employed by executive agencies*, 1 ILLINOIS ISSUES at 8-11 (Dec. 1975).

90. Fourth Special Session, 79th General Assembly, July 9, 1976.

problem. A large enough minority can try to stall the passage of a bill until July 1, when a three-fifths vote becomes necessary to make a law effective in less than twelve months, thereby increasing their bargaining power in obtaining concessions in the content of the bill.<sup>91</sup>

From the standpoint of the legal community, the 1970 Illinois Constitution's effective date provision and the adoption of the January 1 effective date by the General Assembly represent a marked improvement over the situation under the 1870 Illinois Constitution. More factors must be taken into consideration to determine the effective date of a bill under the new constitution, such as the date the bill passed, the vote by which it passed if it passed after June 30, whether there is a specific effective date provision in the bill, and whether the Governor has added an amendatory veto. Under the 1870 constitution, a bill always became effective the day it was signed by the Governor, unless a later date was specified in the bill. The old system was simple and almost totally random. The new system is unfortunately more complicated, but much more uniform. Attorneys have been able to rely on one date as the date legislation is likely to become effective, and beginning in 1978, with the January 1 effective date, they will have a three month period to become familiar with new legislation. Upon the implementation of this provision, every man's life, liberty, and property will be a bit safer.

TABLE 1

Effective date of a bill passed by the Illinois General Assembly				
Action of Governor	Passed prior to July 1		Passed after June 30	
	No Date Specified	Date Specified	No Date Specified	Date Specified
Signed or not vetoed	Jan. 1	date specified	Next July 1	date specified, if by a 3/5 vote
Veto (full, item, or amendatory) overridden, or reduction veto restored	Jan. 1	date specified or date of override, whichever is later	Next July 1	date specified, if by a 3/5 vote, or date of override, whichever is later
Amendatory veto adopted	Jan. 1	date specified, or date of certification, whichever is later	Next July 1	date specified, if by a 3/5 vote, or date of certification, whichever is later

91. Lousin, *After 5 years, Constitution has both friends and foes*, 1 ILLINOIS ISSUES at 358-59 (Dec. 1975).

TABLE 2

Effective Date of Laws in 1969 (Public Acts 76-1 through 76-1965)				
Date	Type of Bill		Total (%)***	
	Appropriation (%)*	Nonappropriation (%)**		
March	19	3	2	5
	20	1	—	1
	25	—	1	1
April	3	2	—	2
	8	2	1	3
	16	1	2	3
	21	1	—	1
	23	—	1	1
	29	1	—	1
	30	6	—	6
May	7	—	1	1
	8	2	1	3
	13	9	—	9
	20	1	1	2
	21	—	1	1
	22	1	—	1
	26	1	2	3
June	27	—	1	1
	3	1	—	1
	5	1	—	1
	10	—	1	1
	12	1	1	2
	13	1	3	4
	17	1	—	1
	18	—	2	2
	20	1	2	3
	23	1	—	1
	24	1	—	1
<hr/>				
Total: March through June		39(9.9%)	23(1.5%)	62(3.15%)
* <i>I.e.</i> , the percentage of appropriations bills ** <i>I.e.</i> , the percentage on nonappropriation bills *** <i>I.e.</i> , the percentage of all bills (Percentages given only in excess of 1%)				
July	1	199(50.6%)	93(5.9%)	292(14.9%)
	5	—	2	2
	8	—	10	10
	10	1	—	1
	11	21(5.3%)	1	22(1.1%)
	15	4	10	14
	17	—	6	6
	18	2	14	16
	22	—	1	1
	23	28(7.1%)	2	30(1.5%)
	24	3	15	18
	28	—	41(2.6%)	41(2.1%)
	29	3	6	9
	30	—	2	2
	31	—	32	32(1.6%)
<hr/>				
Total July		261(66.4%)	235(14.9%)	496(25.2%)

TABLE 2 (cont'd)

August	1	—	5	5
	4	1	—	1
	5	—	36(2.3%)	36(1.8%)
	6	2	20(1.3%)	22(1.1%)
	7	1	46(2.9%)	47(2.4%)
	8	—	9	9
	11	4	9	13
	15	16(4.1%)	45(2.9%)	61(3.1%)
	18	—	13	13
	19	1	59(3.8%)	60(3.1%)
	20	2	39(2.5%)	41(2.1%)
	21	—	2	2
	22	1	3	4
	26	9	112(7.1%)	121(6.2%)
	28	1	99(6.3%)	100(5.1%)
	29	—	8	8
Total August		38(9.7%)	505(32.1%)	543(27.6%)
September	4	—	32(2.0%)	32(1.6%)
	8	1	3	3
	11	1	11	12
	12	—	5	5
	15	8	101(6.4%)	109(5.5%)
	16	—	36(2.3%)	36(1.8%)
	17	—	20(1.3%)	20(1.0%)
	19	—	8	8
	22	3	156(9.9%)	159(8.1%)
	23	2	6	8
	25	—	5	5
	26	—	11	11
	28	—	1	1
	29	—	5	5
	30	2	25(1.6%)	27(1.4%)
Total September		17	425(27.0%)	442(22.5%)
October	1	16	6	22(1.1%)
	2	1	12	13
	3	1	15	16
	6	4	83(5.3%)	87(4.4%)
	7	1	14	15
	9	1	37(2.4%)	38(1.9%)
	10	7	65(4.1%)	72(3.7%)
	13	2	42(2.7%)	44(2.2%)
	14	2	13	14
	15	1	1	2
	23	2	2	4
Total October		38(9.7%)	289(18.4%)	327(16.6%)
December	1	—	5	5
January 1, 1970	—	—	53(3.4%)	53(2.7%)
	2	—	2	2
July	1	—	30(1.9%)	30(1.5%)
January 1, 1971	—	—	5	5
Total		393(20%)	1572(80%)	1965(100%)

TABLE 3

Effective Date of Laws in 1973 (Public Acts 78-1 through 78-917)				
Type of Bill				
Date		Appropriation (%)	Nonappropriation (%)	Total (%)
March	26	—	1	1
	27	1	—	1
April	4	—	1	1
	12	1	8(1.1%)	9(1.0%)
	24	1	—	1
May	16	—	1	1
	24	1	—	1
	29	1	—	1
	30	1	1	2
June	1	2	1	3
	8	1	—	1
	11	1	—	1
	13	1	—	1
	15	1	—	1
	20	3	—	3
	22	1	1	2
	26	2	—	2
	29	2	1	3
	30	1	1	2
Total: March through June		21(12%)	16(2.2%)	37(4.0%)
July	1	1	—	1
	13	95(54.3%)	6	101(11.0%)
	16	24(13.7%)	—	24(2.6%)
	17	10(5.7%)	—	10(1.1%)
	18	7(4%)	12	19(2.1%)
	19	1	3	4
Total July		138(78.8%)	21(2.8%)	159(17.3%)
August	6	—	4	4
	7	—	2	2
	13	—	14(1.9%)	14(1.5%)
	15	—	2	2
	17	—	2	2
	23	—	1	1
	28	1	17(2.3%)	18(1.9%)
	30	1	6	7
Total August		2	48(6.5%)	50(5.5%)
September	1	—	2	2
	4	—	1	1
	6	3	11(1.5%)	14(1.5%)
	7	4	9(1.2%)	13(1.4%)
	8	3	—	3
	10	—	20(2.7%)	20(2.2%)
	11	—	11(1.5%)	11(1.2%)
	12	—	8	8
	13	—	2	2
	14	—	5	5
	15	—	8	8

TABLE 3 (cont'd)

	20	—	1	1
	21	—	4	4
<hr/>				
Total				
September		10(5.7%)	82(11.1%)	92(10.0%)
October	1	2	510(68.7%)	512(55.8%)
November	9	1	1	2
January 1, 1974		—	50(6.7%)	50(5.5%)
February 1, 1974		—	1	1
March 1, 1974		—	2	2
July 1, 1974		1	11	12(1.3%)
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Total		175(19.1%)	742(80.9%)	917(100%)
<hr/>				

TABLE 4

Effective Date of Laws in 1965 (Total Number of Bills, 3773)		
(Generally percentages only in excess of 1% will be given)		
Date	Number of Bills Passed	Percentage of Total
February	16	—
March	78	2
April	9	—
May	16	—
June	1.5	—
July 1	1,053	28
After June 30, 1965 Bills Approved by the Governor		
July	2	45
	6	15
	7	2.5
	8	52.5
	12	78.5
	13	34
	14	67.5
	15	113
	16	46
	17	94.5
	20	69.5
	21	117
	22	27
	23	135
August	2	287
	3	73
	4	83.5
	5	98
	6	66
	9	97.5
	10	108
	11	5.5
	13	89.5
	17	69
	18	38
	20	295.5
	23	43
	24	488.5
Bills passed by June 30, 1965 and approved by the Governor either before or after June 30, 1965 but which by their terms provided for an effective date after July 1, 1965.		
Date	Number of Bills	Percentage of Total
October 1, 1965	1.5	—
January 1, 1966	14	—
July 1, 1966	1	—
July 1, 1967	1.5	—
Effective When Certain Conditions in the Bills are met .04%		

TABLE 4 (cont'd)

Percentage of Bills Effective During 1975-76  
(Sample Based on 367 of the first 1,109 Public Acts in 1975)

Date	Number of Bills	Percentage of Total
Before July 1	21	6
On July 1	25	7
After July 1 but before Oct. 1	53	14
On Oct. 1	257	67
After Oct. 1 but before Jan. 1, 1976	—	—
On Jan. 1, 1976	8	2
After Jan. 1, 1976 but before July 1, 1976	1	—
On July 1, 1976	1	—
After July 1, 1976	1	—



