

The original documents are located in Box 7, folder “Congressional - Legislation Becoming Law Without the President's Signature” of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

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THE WHITE HOUSE

WASHINGTON

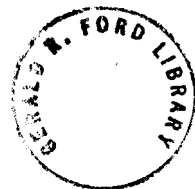
September 7, 1976

MEMORANDUM FOR: PHIL BUCHEN
FROM: JIM CANNON *Jm*
SUBJECT: Allowing legislation to become law
without President's signature

The President is considering not acting on the appropriations bill for the Public Works/Counter-cyclical program which is expected to be passed soon. (You will remember the Congress overrode the President's veto of the authorizing legislation.)

Would you please have the appropriate member of your staff look into the legal/historical background relevant to this course of action? Specifically,

- (1) What procedures are followed, e.g. is a statement issued, etc.?
- (2) What was the original purpose of time requirements for Presidential action?
- (3) How has the provision been used in the past -- both by President Ford and former Presidents?



THE WHITE HOUSE

WASHINGTON

September 13, 1976

MEMORANDUM FOR: JIM CANNON
FROM: PHIL BUCHEN *P.*
SUBJECT: Enactment of Legislation Without
the Approval of the President

This responds to your request of September 7 on the subject noted above:

I

Article I, section 7, clause 2 of the Constitution provides in pertinent part:

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States: If he approves he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated.

* * *

If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.



The Constitution thus gives the President the primary options of approving a bill by signing it, or of returning it to Congress with his objections. In the latter case it becomes law only if approved by two-thirds of both Houses of Congress. If, however, the President does not exercise either option within ten days (Sundays excepted) following the presentation of the bill to him, and the Congress is in session at that time, the bill will become law as if he had signed it. In other words, if Congress is in session at the end of

the ten-day period allowed to the President for the exercise of his veto, a bill becomes law when the President approves it or if he remains inactive.

An examination of the records of the Constitutional Convention and of the Federalist Papers has not disclosed any discussion of the constitutional provision that a bill becomes law if the President fails to sign it by the expiration of the veto period, provided Congress is still in session. The reason for this lack of discussion is probably that this technical aspect of the veto provisions of the Constitution was copied from state Constitutions. Alexander Hamilton suggested that it was derived from the Massachusetts Constitution. The Federalist, No. 69. In United States v. Weil, 29 Ct. Cl. 523, 542-546 (1894), Judge Knott documented quite convincingly that it was derived from the New York Constitution. Both Constitutions provided "in order to prevent unnecessary delays" that a bill shall become law if it is not returned within a specified period. In other words, a bill became law unless the veto power was exercised within the constitutional period.

II

In early July, 1789, President Washington considered permitting the Tonnage Act of July 31, 1789, 1 Stat. 29, to become law without his signature because of his objection to its discriminatory provisions. He did not do so since he had been assured that the Senate was preparing another law that would obviate his objections. The Writings of Washington, Vol. 30, p. 359, at 363. 1/

The practice of allowing bills to become law without the President's signature apparently began with President Buchanan and was used fairly frequently for the following thirty years. It appears that a study prepared in 1890 by S. E. Mason, The Veto Power, sets

1/ The Act of September 16, 1789, 1 Stat. 69, suspended the Act of July 31, 1789, in part.



forth the number of bills which became law without the approval of the President:

President Buchanan	2
Lincoln	1
Johnson	18
Grant	136
Arthur	13
Cleveland	283

See Rogers: The Power of the President to Sign Bills After Congress has Adjourned, 30 Yale Law Journal 1, 4 at fn. 6.

There appears to be no tabulation for the period from 1890 to 1945. But we do know that during President Wilson's illness in the fall of 1919, 28 bills became law without his signature. Rogers, American Government and Politics, 14 American Political Science Review, 74, 87. See 41 Stat. 324-356 passim. In 1938, President Franklin D. Roosevelt permitted the Internal Revenue Act of 1938 to become law without his signature. 52 Stat. 447, 584. In an address given at Arthurdale, West Virginia, he explained that he was neither approving nor returning the bill, but taking the "third course of action which is open to me under the Constitution" in order to call "the definite attention of the American people to those unwise parts of the bill that I have been talking to you about today." The Public Papers and Addresses of Franklin D. Roosevelt, 1938, 355, 365-365, see also id., at 218. 2/

Beginning in 1945, the Office of the Executive Clerk of the White House has maintained records of bills which became law without the President's signature. That Office has furnished the following information:

In the 1950's, President Truman permitted a minor public bill 3/ and the following four private bills to become law without his signature. Acts of August 12, 1950, 64 Stat. A 168; July 7, 1951, 65 Stat. A 55; August 23, 1951, 65 Stat. A 84; July 1, 1952, 66 Stat. A 120. President Truman had desired to let the Independent Offices Appropriation Bill, 1952, become law without his signature. At that time the House of Representatives, in which the legislation had originated, was in recess but the Senate was in session. Since it was uncertain whether the adjournment of one House constituted an adjournment of the Congress within the meaning of the

2/ President Roosevelt also stressed the exceptional nature of his procedure.

3/ Act of February 26, 1950, 64 Stat. 11, authorizing the Marine Corps Band to attend the celebration of the 175th anniversary of the Battle of Lexington and Concord.



Constitution (see Wright v. United States, 302 U.S. 583 (1938)), President Truman approved the bill rather than risk an unintended pocket veto. 65 Stat. 268.

President Eisenhower permitted Private Law 84-146 of July 6, 1955, to become law without his signature. 69 Stat. A 51.

President Nixon permitted the following legislation to become law without his signature:

1. Act of June 30, 1970, to provide a special milk program for children, Pub. L. 91-295, 84 Stat. 336.
2. Act of October 6, 1970, the Emergency Community Facilities Act of 1970, Pub. L. 91-431, 84 Stat. 886.
3. Act of December 18, 1973, conferring jurisdiction on the U. S. District Court of certain civil actions brought by the Senate Select Committee on Presidential Campaign Activities, Pub. L. 93-190, 87 Stat. 736.

It may be noted that President Nixon sought to pocket veto the Family Medicine Bill presented to him December 14, 1970. The Court of Appeals for the District of Columbia Circuit held that the Christmas recess of Congress did not prevent the return of the bill and that the legislation therefore had become law on December 25, 1970, without the President's approval. Publ. L. 91-696, 84 Stat. (Supp.) 2080-1.

President Ford permitted a bill suspending a cost increase of food stamps to become law without his signature. Act of February 20, 1975, Pub. L. 94-4, 89 Stat. 6.

III

In connection with the instances prior to 1890, records are not available to ascertain whether Presidents issued statements when they permitted bills to become law without their signature. The circumstances surrounding President Wilson's illness indicate why no statements were issued at that time. It has been shown above that President Roosevelt delivered a speech explaining why he did not approve the Internal Revenue Act of 1938. The bills which became law during the Administrations of Presidents Truman and Eisenhower without the President's signature were too insignificant to warrant an explanation. In each of the four instances in which Presidents Nixon and Ford intentionally permitted bills to become law

without specific approval, they issued statements setting forth the reasons for having taken that course of action. See the statements of June 30, 1970, 6 Weekly Compilation of Presidential Documents 856; October 6, 1970, 6 *id.* 1342; December 17, 1973, 9 *id.* 1470; and February 13, 1975, 11 *id.* 182.

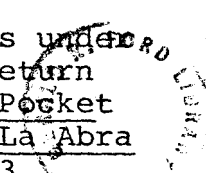
IV

Occasionally there have been statements to the effect that the Constitution imposes on the President the requirement to approve or return a bill presented to him, and that the clause permitting a bill to become law without his signature is intended to cover the situation where a President "neglects" to perform that constitutional duty. Thus, President Taft stated in a lecture delivered in 1961:

The language of the Constitution with reference to what the President shall do with a bill leaves only two alternatives, one that if he approve he shall sign the bill, the other that he shall return it with his objections. It does provide that if he fails to return it within ten days it shall become a law, but this would seem to be only a provision for his neglect. In practice [sic], however, some Presidents have allowed bills to become law without their signature, with the idea, I presume, that objections to the bill prevented affirmative approval and yet were not of such a character as to justify a veto. Mr. Cleveland looked at the matter in this way when he allowed the Wilson-Gorman tariff bill to become a law without his signature, though he had denounced it in most emphatic terms in a letter to Mr. Catchings, of the house, as an act of perfidy and dishonor. My own judgment is that the wiser course in such a case is for the President to sign the bill, with a memorandum of his reasons for doing so, in spite of his objections. Taft, *The Presidency*, pp. 24-25. (Emphasis added). 4/

In Gardner v. Collector, 6 Wall. 499, 506 (1867), the Supreme Court, however, recognized that the

4/ Language to the effect that the President is under a duty to sign bills which he approves and to return bills which he disapproves may be found in The Pocket Veto Case, 279 U.S. 655, 677 (1929). See also La Abra Silver Mining Co. v. United States, 175 U.S. 423, 453-4 (1899).



Constitution gives the President two courses of action to effectuate the enactment of a bill, viz., to sign it, or to keep it for ten days. This supports President Roosevelt's statement, supra, that the Constitution confers on the President three choices: viz., to sign, to return, or to remain inactive. As one scholar suggests, the Constitution designedly enables a President to permit a bill to become law without his formal endorsement. W. F. Willoughby, Principles of Legislative Organization and Administration, p. 92.

The practice of explaining why the President permits a bill to become law without his approval should suffice to overcome most of President Taft's objections to that course of action.

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