

QUESTION NO. 1

Amendment to the *Nevada Constitution*

Assembly Joint Resolution No. 5 of the 75th Session

CONDENSATION (Ballot Question)

Shall the *Nevada Constitution* be amended to expressly provide that the Legislature may, on extraordinary occasions, convene a special legislative session upon a petition signed by two-thirds of the Legislators of each House; to limit the subject matter of bills passed at a special session; to limit the duration of a special session to 20 consecutive calendar days except for proceedings involving impeachment, removal or expulsion from office; and to require the Legislature to adjourn all sessions on their final day not later than midnight based on the actual time on the clock?

Yes No

EXPLANATION

This ballot measure would amend the *Nevada Constitution* to expressly provide that the Legislature may call itself into special session on extraordinary occasions by a petition signed by two-thirds of the members of both the Assembly and Senate. Given the current size of the Legislature, 14 of the 21 Senators and 28 of the 42 members of the Assembly would have to sign the petition. Extraordinary occasions may include instances when it is necessary to address unexpected conditions or emergency situations, to conduct impeachment, removal or expulsion proceedings for misconduct in office, or to reconsider bills vetoed by the Governor after the adjournment of a regular session.

This measure provides that the Legislature may not introduce, consider or pass any bills at a special session, whether convened by the Legislature or the Governor, except for bills related to the business specified in the petition or Governor's proclamation and bills necessary to pay for the cost of the special session. This measure also limits a special session to 20 consecutive calendar days unless the special session is called for the purpose of impeachment, removal or expulsion from office. Under these circumstances, an exception is provided to allow sufficient time for due process considerations.

Currently, the *Nevada Constitution* provides that regular sessions of the Legislature must be adjourned on the final day of the session not later than "midnight Pacific standard time." When the state is observing daylight saving time on the final day of a session, the Legislature is not required to adjourn the session when the clock strikes midnight, but may continue the session until 1:00 a.m. Pacific daylight saving time because such time is equivalent to "midnight Pacific standard time." This measure provides that regular sessions and special sessions must be adjourned on the final day before "midnight Pacific time," which is defined to mean the actual time on the clock.

A “Yes” vote would amend the *Nevada Constitution* to: (1) give the Legislature express power to call itself into special session on extraordinary occasions; (2) limit the subject matter of bills passed at a special session; (3) limit the duration of a special session except for a special session called to conduct proceedings for impeachment, removal or expulsion from office; and (4) provide that regular and special sessions must be adjourned on the final day not later than “midnight Pacific time,” which is defined to mean the actual time on the clock.

A “No” vote would retain the provisions of the *Nevada Constitution* in their current form, which give only the Governor express power to convene the Legislature into special session and which provide that regular sessions of the Legislature must be adjourned on the final day not later than “midnight Pacific standard time,” which has been interpreted by the Nevada Supreme Court to be 1:00 a.m. Pacific daylight saving time.

ARGUMENTS FOR PASSAGE

Because there are extraordinary occasions when immediate action is critical, it is imperative for the Legislature to have express power to call itself into special session. For example, should a governor act in self-interest or defy the will of the people, the Legislature has no express power to address the situation. It is unwise for only one elected official to have the express power to convene special sessions. If a Nevada governor were accused of serious misconduct, it is highly unlikely that the governor would convene a special session for his or her own impeachment. Under such circumstances, the governor could remain in office until the next regular session, which could be a period of nearly 20 months. This measure would ensure that such a situation never occurs in Nevada.

This express legislative power is not unusual. Currently, legislatures in 34 states are authorized to call a special session. The measure provides the Legislature with a safety mechanism to address extraordinary occasions that is already available to legislatures in two-thirds of the states.

This measure includes strict safeguards to ensure that the Legislature does not abuse the special-session power. It is extremely difficult to reach a two-thirds supermajority of the members from both Houses, especially to take extraordinary action to convene a special session. The supermajority would have to specify in the petition the business to be transacted at the special session, and the Legislature could not pass any bills except those related to the business specified in the petition and those necessary to fund the session. The Legislature also could not stay in session longer than 20 consecutive calendar days except for proceedings involving impeachment, removal or expulsion from office. These safeguards will make such special sessions rare.

Finally, this measure would provide that regular and special sessions must be adjourned on the final day before “midnight Pacific time,” which is defined to mean the actual time on the clock. Midnight means midnight, not 1:00 a.m. The Legislature should not be allowed to follow a different clock than the citizens of this state.

ARGUMENTS AGAINST PASSAGE

When extraordinary situations have arisen in the past, Nevada's governors have convened 26 special sessions to address those situations. The Legislature has never had to impeach a Nevada governor. In fact, there has only been one impeachment proceeding involving a state officer in Nevada's history. Furthermore, this measure is not limited to situations involving impeachment, removal or expulsion from office.

Nevada's biennial regular sessions are intended to curtail the amount of time the Legislature may engage in law-making. The framers of the *Nevada Constitution* created a part-time "citizen Legislature" by limiting the occurrence of regular sessions to once every two years. This measure may move Nevada away from the tradition of a part-time Legislature. Although the length of any one special session is limited to 20 consecutive calendar days, this measure does not limit the number of special sessions that can be called by the Legislature. Nevadans may be subject to the passage of an increasing number of laws if the Legislature can call itself into special session.

Lastly, the *Nevada Constitution* gives the Legislature 120 consecutive calendar days of 24 hours each to complete its legislative business during a regular session. When Nevada advances its clocks to daylight saving time during a regular session, one of those days is shortened to 23 hours. To account for the lost hour because of the time change, it makes sense for the Legislature to adjourn on the final day of the session one hour later at 1:00 a.m. Pacific daylight saving time.

FISCAL NOTE

Financial Impact—Cannot Be Determined

The proposed amendment to the *Nevada Constitution* would expressly provide a method for members of the Nevada Legislature to convene a special session of the Legislature. If this proposal is approved there would be costs associated with convening and holding a special session called by the Legislature, but the financial impact cannot be established with any degree of certainty because the number and duration of such special sessions cannot be predicted. It should be noted that the costs to organize and hold a special session convened by the Legislature would be the same as a special session convened by the Governor. The state may incur minimal costs to develop and circulate the petition required to convene a special session under the proposal, which should have no adverse fiscal impact on the state.

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FULL TEXT OF MEASURE

Assembly Joint Resolution No. 5—Assemblymen Mortenson, Ohrenschall, Horne, Kihuen and Segerblom
FILE NUMBER.....

ASSEMBLY JOINT RESOLUTION—Proposing to amend the Nevada Constitution to limit the duration of special sessions of the Legislature to 20 consecutive calendar days with the exception of impeachment, removal and expulsion proceedings, to limit the types of bills which may be introduced, considered or passed during a special session, to provide that a special session may be convened by a petition signed by

two-thirds of the Legislators of each House and to provide that regular and special sessions must be adjourned on the final calendar day not later than midnight Pacific time based on the actual measure of time used and observed by the general population of Nevada.

Legislative Counsel's Digest:

Under the Nevada Constitution, only the Governor is granted express power to convene a special session of the Legislature on extraordinary occasions. (Nev. Const. Art. 5, § 9) The Nevada Constitution does not grant the Legislature express power to convene a special session on extraordinary occasions, such as when it is necessary to: (1) hold impeachment or removal proceedings against the Governor, Supreme Court Justices or other state and judicial officers who have committed misconduct in office; (2) hold expulsion proceedings against Legislators who have committed misconduct in office; (3) enact bills or appropriations to address unexpected conditions or emergency situations; or (4) reconsider bills vetoed by the Governor after the adjournment of a regular session. (Nev. Const. Art. 4, §§ 1, 6, 16-23, 35; Nev. Const. Art. 7, §§ 1-3)

This resolution proposes to amend the Nevada Constitution to authorize the Legislature, on extraordinary occasions, to convene a special session upon a petition signed by two-thirds of the members of each House of the Legislature. This resolution also provides that the only bills the Legislature may introduce, consider or pass at any special session are bills related to the business for which the special session is convened and bills necessary to provide for the expenses of the session. In addition, this resolution limits the duration of any special session to 20 consecutive calendar days, unless the special session is convened to conduct proceedings for: (1) impeachment or removal from office of the Governor, Supreme Court Justices or other state and judicial officers pursuant to Article 7 of the Nevada Constitution; or (2) expulsion from office of a Legislator pursuant to Section 6 of Article 4 of the Nevada Constitution. The exceptions for impeachment, removal and expulsion proceedings are necessary to ensure that such proceedings comport with the concepts of due process, substantial justice and fundamental fairness. (U.S. Const. Amend. XIV, § 1; Nev. Const. Art. 1, § 8) Finally, the Nevada Constitution provides that regular sessions must be adjourned on the final calendar day not later than "midnight Pacific standard time." (Nev. Const. Art. 4, § 2) The Nevada Supreme Court has held that when the State is observing daylight saving time on the final calendar day of a session, the Legislature is not required to adjourn the session when the clock strikes midnight for the general population of Nevada but may continue the session until 1:00 a.m. Pacific daylight saving time because such time is equivalent to "midnight Pacific standard time." (*Nevada Mining Ass'n v. Erdoes*, 117 Nev. 531 (2001)) This resolution proposes to amend the Nevada Constitution to provide that regular and special sessions must be adjourned on the final calendar day not later than "midnight Pacific time," which must be determined based on the actual measure of time that is being used and observed by the general population of Nevada within the Pacific time zone or, in other words, the time on the clock. The resolution also provides that the Legislature and its members, officers and employees shall not employ any device, pretense or fiction that adjusts, evades or ignores the time on the clock for the purpose of extending the duration of the session. If this resolution is passed by the 2009 Legislature, it must also be passed by the next Legislature and then approved and ratified by the people in an election, before the proposed amendments to the Nevada Constitution become effective.

WHEREAS, The Nevada Constitution does not grant the Nevada Legislature express power to convene a special session on extraordinary occasions; and

WHEREAS, There are extraordinary occasions when it is imperative for the Legislature to have express power to convene a special session, such as when it is necessary to hold impeachment or removal proceedings pursuant to Article 7 of the Nevada Constitution against the Governor, Supreme Court justices or other state and judicial officers who have committed misconduct in office, or when it is necessary to hold expulsion proceedings pursuant to Section 6 of Article 4 of the Nevada Constitution against Legislators who have committed misconduct in office; and

WHEREAS, There are other extraordinary occasions when it is imperative for the Legislature to have express power to convene a special session, such as when it is necessary to enact bills or appropriations to address unexpected conditions or emergency situations, or when it is necessary to reconsider bills vetoed by the Governor after the adjournment of a regular session; and

WHEREAS, There are currently 32 state legislatures in the nation that have express power to call a special session when there are extraordinary occasions; and

WHEREAS, The Nevada Legislature is part of a group of only 18 state legislatures that do not have express power to call a special session, and part of a group of only 11 state legislatures that may not determine any of the subject matter to be considered at a special session; and

WHEREAS, The Nevada Constitution is grounded on the principle of three coequal branches of State Government, with the ultimate authority and responsibility to enact necessary legislation being vested in the Legislative Branch, subject to final approval by the Governor; and

WHEREAS, Nevada's current constitutional language, which grants the Governor express power to call the Legislature into special session but which does not grant such express power to the Legislature,

diminishes the constitutional separation of powers by impeding the authority of this State's elected Legislature to perform its constitutional functions of enacting necessary legislation and conducting impeachment, removal and expulsion proceedings on extraordinary occasions; and

WHEREAS, The Nevada Legislature should be authorized to operate with a reasonable degree of independence from the Executive and Judicial Branches as is consistent with the separation of powers principle, and should be empowered to identify those extraordinary occasions that may require the Legislature to call a limited special session deemed in the best interest of the people of the State of Nevada; now, therefore, be it

RESOLVED BY THE ASSEMBLY AND SENATE OF THE STATE OF NEVADA, JOINTLY, That a new section, designated Section 2A, be added to Article 4 of the Nevada Constitution to read as follows:

Sec. 2A. 1. The Legislature may be convened, on extraordinary occasions, upon a petition signed by two-thirds of the members elected to each House of the Legislature. A petition must specify the business to be transacted during the special session, indicate a date on or before which the Legislature is to convene and be transmitted to the Secretary of State. Upon receipt of one or more substantially similar petitions signed, in the aggregate, by the required number of members, calling for a special session, the Secretary of State shall notify all members of the Legislature and the Governor that a special session will be convened pursuant to this section.

2. At a special session convened pursuant to this section, the Legislature shall not introduce, consider or pass any bills except those related to the business specified in the petition and those necessary to provide for the expenses of the session.

3. A special session convened pursuant to this section takes precedence over a special session convened by the Governor pursuant to Section 9 of Article 5 of this Constitution, unless otherwise provided in the petition convening the special session pursuant to this section.

4. The Legislature may provide by law for the procedure for convening a special session pursuant to this section.

5. Except as otherwise provided in this subsection, the Legislature shall adjourn sine die a special session convened pursuant to this section not later than midnight Pacific time at the end of the 20th consecutive calendar day of that session, inclusive of the day on which that session commences. Any legislative action taken after midnight Pacific time at the end of the 20th consecutive calendar day of that session is void. This subsection does not apply to a special session that is convened to conduct proceedings for:

(a) Impeachment or removal from office of the Governor and other state and judicial officers pursuant to Article 7 of this Constitution; or

(b) Expulsion from office of a member of the Legislature pursuant to Section 6 of Article 4 of this Constitution.

6. For the purposes of this section, "midnight Pacific time" must be determined based on the actual measure of time that, on the final calendar day of the session, is being used and observed by the general population as the uniform time for the portion of Nevada which lies within the Pacific time zone, or any legal successor to the Pacific time zone, and which includes the seat of government of this State as designated by Section 1 of Article 15 of this Constitution. The Legislature and its members, officers and employees shall not employ any device, pretense or fiction that adjusts, evades or ignores this measure of time for the purpose of extending the duration of the session.

And be it further

RESOLVED, That Section 2 of Article 4 of the Nevada Constitution be amended to read as follows:

Sec. 2. 1. The sessions of the Legislature shall be biennial, and shall commence on the 1st Monday of February following the election of members of the Assembly, unless the Governor of the State *or the members of the Legislature* shall, in the interim, convene the Legislature by proclamation *[.] or petition.*

2. The Legislature shall adjourn sine die each regular session not later than midnight Pacific *[standard time 120 calendar days following its commencement.] time at the end of the 120th consecutive*

calendar day of that session inclusive of the day on which that session commences. Any legislative action taken after midnight Pacific [standard time on] *time at the end of* the 120th *consecutive* calendar day *of that session* is void, unless the legislative action is conducted during a special session . [convened by the Governor.]

3. The Governor shall submit the proposed executive budget to the Legislature not later than 14 calendar days before the commencement of each regular session.

4. For the purposes of this section, “midnight Pacific time” must be determined based on the actual measure of time that, on the final calendar day of the session, is being used and observed by the general population as the uniform time for the portion of Nevada which lies within the Pacific time zone, or any legal successor to the Pacific time zone, and which includes the seat of government of this State as designated by Section 1 of Article 15 of this Constitution. The Legislature and its members, officers and employees shall not employ any device, pretense or fiction that adjusts, evades or ignores this measure of time for the purpose of extending the duration of the session.

And be it further

RESOLVED, That Section 33 of Article 4 of the Nevada Constitution be amended to read as follows:

Sec . [:] 33. The members of the Legislature shall receive for their services [,] a compensation to be fixed by law and paid out of the public treasury, for not to exceed 60 days during any regular session of the [legislature] *Legislature* and not to exceed 20 days during any special session ; [convened by the governor;] but no increase of such compensation shall take effect during the term for which the members of either house shall have been elected ; Provided, that an appropriation may be made for the payment of such actual expenses as members of the Legislature may incur for postage, express charges, newspapers and stationery not exceeding the sum of Sixty dollars for any general or special session to each member; and Furthermore Provided, that the Speaker of the Assembly, and Lieutenant Governor, as President of the Senate, shall each, during the time of their actual attendance as such presiding officers receive an additional allowance of two dollars per diem.

And be it further

RESOLVED, That Section 9 of Article 5 of the Nevada Constitution be amended to read as follows:

[Sec: 9. The]

Sec. 9. 1. Except as otherwise provided in Section 2A of Article 4 of this Constitution, the Governor may, on extraordinary occasions, convene the Legislature by Proclamation and shall state to both houses , when organized, the [purpose] *business* for which they have been *specialy* convened . [, and the legislature shall transact no legislative business, except that for which they were specially convened, or such other legislative business as the Governor may call to the attention of the Legislature while in Session.]

2. At a special session convened pursuant to this section, the Legislature shall not introduce, consider or pass any bills except those related to the business for which the Legislature has been specially convened and those necessary to provide for the expenses of the session.

3. Except as otherwise provided in this subsection, the Legislature shall adjourn sine die a special session convened pursuant to this section not later than midnight Pacific time at the end of the 20th consecutive calendar day of that session, inclusive of the day on which that session commences. Any legislative action taken after midnight Pacific time at the end of the 20th consecutive calendar day of that session is void. This subsection does not apply to a special session that is convened to conduct proceedings for:

(a) Impeachment or removal from office of the Governor and other state and judicial officers pursuant to Article 7 of this Constitution; or

(b) Expulsion from office of a member of the Legislature pursuant to Section 6 of Article 4 of this Constitution.

4. For the purposes of this section, “midnight Pacific time” must be determined based on the actual measure of time that, on the final calendar day of the session, is being used and observed by the general population as the uniform time for the portion of Nevada which lies within the Pacific time zone, or any legal successor to the Pacific time zone, and which includes the seat of government of this State as designated by Section 1 of Article 15 of this Constitution. The Legislature and its members, officers and employees shall not employ any device, pretense or fiction that adjusts, evades or ignores this measure of time for the purpose of extending the duration of the session.