

A.J.R. 5 of the 75th Session

ASSEMBLY JOINT RESOLUTION NO. 5—ASSEMBLYMEN MORTENSON, OHRENSCHALL; HORNE, KIHUEN AND SEGERBLOM

MARCH 11, 2009

Referred to Committee on Elections, Procedures, Ethics,
and Constitutional Amendments

SUMMARY—Proposes to amend the Nevada Constitution to revise provisions governing the convening and conduct of special sessions and the duration and adjournment of regular and special sessions. (BDR C-139)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

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:

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



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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



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

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

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

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

20 WHEREAS, Nevada's current constitutional language, which
21 grants the Governor express power to call the Legislature into
22 special session but which does not grant such express power to the
23 Legislature, diminishes the constitutional separation of powers by
24 impeding the authority of this State's elected Legislature to perform
25 its constitutional functions of enacting necessary legislation and
26 conducting impeachment, removal and expulsion proceedings on
27 extraordinary occasions; and

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

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

38 *Sec. 2A. 1. The Legislature may be convened, on*
39 *extraordinary occasions, upon a petition signed by two-*
40 *thirds of the members elected to each House of the*
41 *Legislature. A petition must specify the business to be*
42 *transacted during the special session, indicate a date on or*
43 *before which the Legislature is to convene and be*
44 *transmitted to the Secretary of State. Upon receipt of one or*
45 *more substantially similar petitions signed, in the aggregate,*



1 *by the required number of members, calling for a special*
2 *session, the Secretary of State shall notify all members of*
3 *the Legislature and the Governor that a special session will*
4 *be convened pursuant to this section.*

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

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

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

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

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

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

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

45 And be it further



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

3 Sec. 2. 1. The sessions of the Legislature shall be
4 biennial, and shall commence on the 1st Monday of February
5 following the election of members of the Assembly, unless
6 the Governor of the State *or the members of the Legislature*
7 shall, in the interim, convene the Legislature by proclamation
8 ~~or petition.~~

9 2. The Legislature shall adjourn sine die each regular
10 session not later than midnight Pacific ~~standard time 120~~
11 ~~calendar days following its commencement.~~ *time at the end*
12 *of the 120th consecutive calendar day of that session,*
13 *inclusive of the day on which that session commences.* Any
14 legislative action taken after midnight Pacific ~~standard time~~
15 ~~on~~ *time at the end of the 120th consecutive* calendar day *of*
16 *that session* is void, unless the legislative action is conducted
17 during a special session . ~~convened by the Governor.~~

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

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

33 And be it further

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

36 Sec. ~~33~~ 33. The members of the Legislature shall
37 receive for their services ~~a~~ a compensation to be fixed by
38 law and paid out of the public treasury, for not to exceed 60
39 days during any regular session of the ~~Legislature~~
40 *Legislature* and not to exceed 20 days during any special
41 session ; ~~convened by the governor;~~ but no increase of such
42 compensation shall take effect during the term for which the
43 members of either house shall have been elected ; Provided,
44 that an appropriation may be made for the payment of such
45 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 specially 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



1 *time zone, or any legal successor to the Pacific time zone,*
2 *and which includes the seat of government of this State as*
3 *designated by Section 1 of Article 15 of this Constitution.*
4 *The Legislature and its members, officers and employees*
5 *shall not employ any device, pretense or fiction that adjusts,*
6 *evades or ignores this measure of time for the purpose of*
7 *extending the duration of the session.*

