

# Office of Legislative Legal Services

## Colorado General Assembly



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### Frequently Asked Questions Concerning Special Legislative Sessions<sup>1</sup>

In addition to annual, 120-day regular legislative sessions, the Colorado General Assembly may conduct legislative business in special or extraordinary legislative sessions. The Governor may call a special legislative session using the authority in article IV, section 9 of the Colorado Constitution:

**Section 9. Governor may convene legislature or senate.** The governor may, on extraordinary occasions convene the general assembly, by proclamation, stating therein the purpose for which it is to assemble; but at such special session no business shall be transacted other than that specially named in the proclamation. He may by proclamation, convene the senate in extraordinary session for the transaction of executive business.

The General Assembly may also call itself into special session as provided in article V, section 7 of the Colorado Constitution, which states in pertinent part:

**Section 7. General assembly - shall meet when - term of members - committees.** ...The general assembly shall meet at other times when convened in special session by the governor pursuant to section 9 of article IV of this constitution or by written request by two-thirds of the members of each house to the presiding officer of each house to consider only those subjects specified in such request....

The remainder of this memorandum addresses several questions that frequently arise regarding special legislative sessions.

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<sup>1</sup> This FAQ was prepared by the [Office of Legislative Legal Services](#) (OLLS), a staff agency of the General Assembly. OLLS FAQs and other informational publications do not represent an official legal position of the General Assembly or the State of Colorado and do not bind the members of the General Assembly. They are intended for use in the legislative process and as information to assist the members in the performance of their legislative duties.

### **1. How does the Governor call a special session?**

To convene a special session, the Governor issues a proclamation, commonly referred to as "the call," that states the date upon which the General Assembly will convene and the subject areas it may consider. The Governor's powers to convene a special session are very broad. The Governor can decide what constitutes an "extraordinary occasion" that requires the General Assembly to meet in special session and decide the specific subjects the General Assembly will consider when it convenes.

### **2. How does the General Assembly call itself into a special session?**

Under article V, section 7 of the Colorado Constitution, the presiding officer in each house must request that the legislators agree to convene in a special session to consider the specific subjects identified in the request. Each presiding officer must obtain written approval to convene from at least two-thirds of the members of the presiding officer's respective house. Practically speaking, the President of the Senate and the Speaker of the House of Representatives could meet these requirements by jointly distributing to all of the senators and representatives a letter or email specifying the subjects to be considered during the special session and requesting the signature or electronic signature by return mail or email of each legislator who agrees to convene in special session. Based on a review of the House and Senate journals, the General Assembly has never called itself into special session.

### **3. Is the General Assembly required to convene when the Governor issues a proclamation for a special session?**

Yes. Article V, section 7 of the Colorado Constitution requires the General Assembly to meet when convened in special session by the Governor. However, under its plenary authority, the General Assembly may choose to convene, establish the existence of a quorum, and immediately adjourn without addressing any of the items stated in the Governor's call.

### **4. Does the Governor or the General Assembly determine the scope or subject matter of a special session?**

If the Governor calls the General Assembly into special session, the Governor specifies in the call the subjects that the General Assembly may consider during the session. While the Governor's power to specify these subjects is broad, it is not unlimited. In describing the balance between the Governor's power to describe the subjects for a special session and the powers of the General Assembly to choose and enact legislative measures to address those subjects, the Colorado Supreme Court has held:

...the Governor may define the appropriate subject matter for legislative consideration, but he may not prescribe the specific form that the legislation will take. As stated by this court [previously], the Governor cannot so narrow the matter for legislative consideration that the General Assembly is forced "to do the bidding of the governor, or not act at all."<sup>2</sup>

If the members of the General Assembly call themselves into special session, the subject matter of the session is established by the written request for extraordinary session distributed by the President and the Speaker.

## **5. What is the standard for deciding whether a bill is "within the call"?**

The Colorado Supreme Court has several times interpreted whether legislation enacted at a special session falls within the subjects specified in the call. The Court has repeatedly held that:

...the General Assembly is not limited to a narrow, technical interpretation of the subject matter comprised in the governor's call. However, a speculative, indirect, and tangential relationship between legislation and the call item on which it is based will be insufficient. *People v. Larkin*, 183 Colo. 363, 517 P.2d 389 (1973). To determine whether legislation enacted pursuant to the call of the governor passes constitutional muster, we have adopted a "rational nexus" test, wherein the challenged legislation must bear a rational nexus to an item specified in the governor's call. *Empire Savings Building and Loan Association v. Otero Savings and Loan Association*, 640 P.2d 1151 (Colo.1982).<sup>3</sup>

The Court has upheld the provisions of an act that created a permitting system for persons who work with explosives and created sanctions for failing to obtain a permit because the provisions were rationally related to the call item that authorized "legislation concerning safety inspection by the Division of Labor of the Department of Labor and Employment." But the provisions of the act that created a felony for possessing an explosive device and using it for an unlawful purpose were not rationally related to the call item and were therefore unconstitutional.<sup>4</sup>

In *Wieder*, the Court found that the second degree assault statute, making it unlawful to assault a peace officer while "lawfully confined or in custody," applied to field arrests as well as detention situations, even though the statute was enacted pursuant to a call item that authorized the General Assembly to consider legislation "concerning assault upon a person employed by or under contract with a detention facility." The Court

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<sup>2</sup> *Empire Savings, Building and Loan Association v. Otero Savings and Loan Association*, 640 P.2d 1151, 1157 (Colo. 1982) (quoting *In re Governor's Proclamation*, 19 Colo. 333, 336, 35 P. 530, 531 (1894)).

<sup>3</sup> *Wieder v. People*, 722 P.2d 396, 398 (Colo. 1986).

<sup>4</sup> See *People v. Larkin*, 183 Colo. 363, 365-366, 517 P.2d 389, 390 (1973).

specifically found "a rational nexus between the protection of police officers and fire fighters from assault while in the field and the governor's call to protect persons from assault who are employed by or under contract with a detention facility."<sup>5</sup>

## **6. Who decides whether a bill is "within the call"?**

While a bill is under consideration during a special session, the question of whether the bill fits within the Governor's call is similar to the question of whether a bill is constitutional. The question is a substantive question, not a procedural question; therefore, it is not within the prerogative of a committee chair, the President, or the Speaker to decide. Each legislator, in voting, determines whether the legislator thinks there is a rational nexus between the subject of the bill and one or more of the items in the Governor's call.

After the General Assembly passes the bill and delivers it to the Governor for action, the question of whether the bill fits within the call is one of the considerations the Governor takes into account in determining whether to sign or veto the legislation. If the Governor feels the bill does not fit within the call, the Governor is likely to veto the bill.

Once the bill takes effect, the question of whether legislation enacted at a special session fits within the call arises if a person who is affected by the legislation files suit seeking a decision from the court on the question. The court will decide the issue by applying the rational nexus standard discussed previously. As with any other enacted legislation, the court will presume the legislation is constitutional, and the plaintiff will have the burden of demonstrating that there is not a rational nexus between the legislation and at least one of the items on the Governor's call. The court is likely to give deference to the legislation and interpret the call items broadly, recognizing that the Governor's authority to set the legislative agenda is an exception to the usual separation of powers and should therefore be interpreted reasonably.<sup>6</sup>

## **7. Can the General Assembly consider measures other than bills during a special session? Do the subject limitations in the Governor's call apply to resolutions?**

As quoted above, article IV, section 9 of the Colorado Constitution does not just limit the subjects the General Assembly may consider at a special session; the provision also states "at such special session no business shall be

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<sup>5</sup> *Wieder*, 722 P.2d at 398.

<sup>6</sup> See *People v. McKenna*, 199 Colo. 452, 611 P.2d 574 (1980); *In re Governor's Proclamation*, 19 Colo. 333, 35 P. 530 (1894).

transacted other than that specially named in the proclamation." Thus, a literal reading of the constitution indicates that the limitation does not apply only to bills; matters such as resolutions, if they constitute the transaction of business, are likewise subject to the limitations of the Governor's call.

That said, resolutions and memorials have frequently been considered and passed by the General Assembly at special sessions, and the Executive Committee of Legislative Council has expressly permitted resolutions pertaining to the organization, operation, and closing of the special session to be drafted and introduced. While the Office of Legislative Legal Services (OLLS) is unaware of a legal challenge to a resolution under this Colorado constitutional provision, it is the opinion of the OLLS that the safer course is to otherwise limit the General Assembly's business to items included in the Governor's call.

#### **8. Can the Governor limit the length of a special session? Who decides how long a special session lasts?**

The plain language of article IV, section 9 of the Colorado Constitution does not authorize the Governor to limit the length of time during which the General Assembly may meet once it is called into special session, and there are no other constitutional limitations on the length of a special session. Therefore, under its plenary authority, the General Assembly itself determines the length of a special session by adjourning on the date established by passage of a joint resolution or by a motion of the Majority Leader of each chamber to adjourn the special session sine die.

#### **9. Can the Governor unilaterally adjourn a special session?**

No. The Governor has no authority to unilaterally adjourn the General Assembly. However, under article IV, section 10 of the Colorado Constitution, if there is a disagreement between the two houses as to the date of adjournment, and the house that last moves to adjourn certifies to the Governor that the disagreement exists, the Governor may adjourn the General Assembly to a day not later than the first day of the next regular session. This provision applies to both regular and special legislative sessions.

The OLLS is unaware of any time in the history of Colorado when the Governor has adjourned the General Assembly. In other states where the governor has adjourned the legislature, it appears the certification of disagreement was accomplished by one house passing a resolution stating the disagreement and delivering the resolution to the governor.

## **10. Can the Speaker and the President establish deadlines and bill limits for a special session?**

After the Governor issues a call for a special session, the Executive Committee of the Legislative Council<sup>7</sup> traditionally meets to establish some of the parameters of the special session, based at least in part on the number and complexity of the items on the Governor's call. The Executive Committee typically establishes limits on the number of bills each legislator may introduce and sets deadlines for requesting and introducing bills. The Executive Committee communicates the bill limits and deadlines for the special session by means of a letter or email sent to all legislators. Traditionally, the Senate and House Committees on Delayed Bills operate during special sessions to consider requests for waivers of bill limits and deadlines.

## **11. Do the constitutional provisions concerning bills apply to bills considered during a special session?**

Yes. All of the constitutional provisions that place requirements or restrictions on bills introduced during a regular legislative session also apply to bills introduced during a special session (e.g., each bill must have a single subject expressed in the title<sup>8</sup> and cannot change from its original purpose;<sup>9</sup> appropriations bills cannot include substantive changes to law;<sup>10</sup> revenue-raising bills must originate in the House of Representatives;<sup>11</sup> and a bill must pass both houses and be presented to the Governor<sup>12</sup> to become law). In addition, the procedural requirements stated in the constitution also apply to the conduct of legislative business during a special session (e.g., each introduced bill must be assigned to a committee and must receive

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<sup>7</sup> The Executive Committee of the Legislative Council consists of the President of the Senate, the Speaker of the House of Representatives, and the Majority and Minority Leaders of the Senate and House.

<sup>8</sup> Colo. Const. Art. V, §21.

<sup>9</sup> Colo. Const. Art. V, §17.

<sup>10</sup> Colo. Const. Art. V, §32.

<sup>11</sup> Colo. Const. Art. V, §31.

<sup>12</sup> Colo. Const. Art. IV, §11 and Art. V, §22. However, if the General Assembly adopts a concurrent resolution to amend the state constitution or refers a bill to the voters for approval, the resolution or bill is not presented to the Governor but is instead placed on the ballot for the next eligible election and becomes law only if approved by a majority of voters.

consideration and a vote on the merits;<sup>13</sup> and the second and third readings of a bill must occur on different calendar days<sup>14</sup>).

**12. Do the legislative rules apply to a special session? Are there special legislative rules for a special session?**

Similar to the constitutional provisions, the Senate, House, and Joint rules apply to proceedings during a special session. There are no special legislative rules that apply only during a special session.

**13. How long does the Governor have to act on legislation passed during a special session?**

The Governor has the same length of time to act on legislation passed during a special session as is allowed for legislation passed during a regular legislative session. Under article IV, section 11 of the Colorado Constitution, the Governor, within ten days after receiving a bill, must either sign or veto the bill and return it to the General Assembly, unless the General Assembly adjourns within the ten-day period, in which case the Governor has 30 days after the date of adjournment to act. If the Governor does not act within the applicable time frame, the bill will become law without the Governor's signature. If the Governor vetoes a bill, it must be returned to the General Assembly for consideration of an override of the veto, unless the General Assembly has already adjourned.

**14. Can the General Assembly recess for a period of days during a special session and reconvene to address any vetoes by the Governor?**

Yes. Article V, section 15 of the Colorado Constitution requires both houses to agree, by passing a joint resolution, to adjourn for more than three days. Under this provision, if the houses agree, they can adopt a joint resolution to adjourn (or recess) for a specific period and later reconvene to continue deliberations. Accordingly, the General Assembly may agree to adjourn for a time to allow the Governor to act on the bills it has passed and then reconvene to address any vetoes the Governor may have issued.

**15. If a bill passes during a special session, when does it take effect?**

If a bill introduced during a special session passes with a "safety clause,"<sup>15</sup> the bill will take effect, as applicable:

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<sup>13</sup> Colo. Const. Art. V, §20.

<sup>14</sup> Colo. Const. Art. V, §22.

<sup>15</sup> For an explanation of the "safety clause" and the "act-subject-to-petition clause," see the [Safety Clauses and Act-Subject-to-Petition Clauses](#) memorandum.

- Upon signature by the Governor;
- On the date on which the General Assembly overrides a veto of the bill;
- On the date on which the Governor's time to act expires if the Governor neither signs nor vetoes the bill; or
- On a later date specified in the bill.

If a bill introduced during a special session passes with an "act-subject-to-petition clause,"<sup>16</sup> the bill will take effect, as applicable:

- On the date that is 90 days after the special session is adjourned sine die;
- If the bill is referred to the voters by the General Assembly or is placed on the ballot as a result of a citizens' petition, on the date the vote is proclaimed following the next election at which the bill may be considered; or
- On a later date specified in the bill.

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<sup>16</sup> *Id.*