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MEMORANDUM

TO: Interested Persons

FROM: Office of Legislative Legal Services

DATE: April 19, 2011

SUBJECT: Frequently Asked Questions concerning Special Legislative Sessions

In addition to annual, 120-day regular legislative sessions, the Colorado General Assembly may conduct legislative business in special or extraordinary legislative sessions. A special legislative session may be called by the Governor pursuant to section 9 of article IV of the state constitution as follows:

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 pursuant to section 7 of article V of the state constitution, which provides 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 will address several questions that frequently arise with regard to special legislative sessions.

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 that they may consider. The Governor's powers to convene a special session are very broad. He or she 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 they convene.

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

Under section 7 of article V of the state 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 his or her 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 specifying the subjects to be considered during the special session and requesting the signature by return mail or fax 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, section 7 of article V of the state 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 on 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, he or she specifies in the call the subjects that they 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."

Empire Savings Building and Loan Association v. Otero Savings and Loan Association, 640 P.2d 1151, 1157 (Colo. 1982).

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).

Wieder v. People, 722 P.2d 396, 398 (Colo. 1986).

Thus, 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 they 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. *See People v. Larkin*, 183 Colo. 363, 517 P.2d 389 (1973).

In *Wieder*, *supra*, 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 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." *Wieder* at 398.

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 or the President or the Speaker to decide. Each legislator, in voting, determines whether he or she thinks there is a rational nexus between the subject of the bill and one or more of the items on 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, he or she 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 because 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 legislation will be presumed to be 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." *See People v. McKenna*, 199 Colo. 452, 611 P.2d 574 (1980); *In Re Governor's Proclamation*, 19 Colo. 333, 35 P. 530 (1894).

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, section 7 of article IV of the state constitution does not just limit the subjects the General Assembly may consider at a special session, it states "at such special session *no business shall be transacted other than that specially named in the proclamation.*" (Italics added). Thus a literal reading of the constitution indicates that the limitation does not apply just to bills; matters such as resolutions, if they constitute the transaction of business, are subject to the limitations of the Governor's call.

That said, resolutions and memorials have been frequently considered and passed by the General Assembly at special sessions. The Office of Legislative Legal Services is unaware of any litigation that has challenged resolutions of this type under the Colorado constitutional provision, so we will not speculate about possible outcome of any challenge. However, it is our opinion that the safer course is to limit the General Assembly's business to items contained 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 section 9 of article IV of the state constitution does not authorize the Governor to limit the length of time for which the General Assembly may meet once they are called into special session, nor are there any 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. Traditionally, the General Assembly adopts this joint resolution once it has completed the business for which it was called into special session.

9. Can the Governor unilaterally adjourn a special session?

No. The Governor has no authority to unilaterally adjourn the General Assembly. However, under section 10 of article IV of the state 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.

We are unaware of any time in the history of Colorado when the Governor

has adjourned the General Assembly. In other states where it has occurred, it appears the certification of disagreement has been 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 traditionally meets to establish the estimated length 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 usually also establishes limits on the number of bills each legislator may introduce and deadlines for requesting bills, introducing bills, and by which bills must pass out of committee and out of the first and second house. The Executive Committee communicates the bill limits, deadlines, and proposed schedule for the special session by means of a letter sent to all of the legislators. Both the Senate and House Committees on Delayed Bills traditionally 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 apply equally to bills introduced during a special session (e.g. each bill must have a single subject expressed in the title and cannot change from its original purpose; appropriations bills cannot include substantive changes to law; revenue-raising bills must originate in the House of Representatives; and a bill must pass both houses and be presented to the Governor 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 consideration and a vote on the merits; and the second and third readings of a bill must occur on different calendar days).

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 Legislative 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 section 11 of article IV of the state 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 thirty days after the date of adjournment to act. If the Governor does not act within these time frames, the bill will become law without his or her 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. Under section 15 of article V of the state constitution, both houses must agree, by passage of a joint resolution, to an adjournment of more than three days. But they can decide to adjourn (or recess) for a specific period in order to give the Governor time to act on the bills 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, it will take effect upon signature by the Governor; or on the date on which the General Assembly overrides a veto of the bill; or on the date on which the Governor's time to act expires if he or she neither signs nor vetoes the bill; or on a later date specified in the bill.

If a bill introduced during a special session passes without a safety clause, it will take effect on the date that is ninety days after the special session is adjourned sine die; or, if the act 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 it may be considered; or on a later date specified in the bill.