



SPECIAL & EMERGENCY SESSIONS

ISSUE BRIEF

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This brief describes the similarities and differences between regular sessions and unplanned, emergency (special) sessions of the Oregon Legislative Assembly. Its purpose is to outline the special authorities and limitations provided during an emergency session generally, and to emphasize the provisions of the Oregon Constitution for sessions called in response to a catastrophic disaster declaration.

REGULAR LEGISLATIVE SESSIONS

The Oregon Constitution (Article IV, Section 10) specifies that the Legislative Assembly “shall hold legislative sessions at the Capitol of the State” and provides the maximum length of those sessions (160 days maximum in odd-numbered years, 35 days in even-numbered years). Oregon Revised Statute further specifies that sessions in odd-numbered years begin on the Tuesday after the holiday for the Martin Luther King, Jr. Holiday and that even-numbered year sessions begin on February 1st, except when that day falls on a Thursday, Friday, Saturday, or Sunday, in which case the first day of session is the first Monday in February. Regular sessions may be extended for five days by a two-thirds vote of each house and may be extended more than once.

The rules under which the Legislative Assembly operates are adopted by the House and Senate, respectively, each session. However, the Oregon Constitution does specify some rules, including:

- *Quorum requirements* – two-thirds of each house, present within the respective chambers, constitute a quorum to do business (Article IV, Section 12);
- *Reading of bills and voting* – each bill shall be read by title only on three separate days in each house and, unless waived by vote of two-thirds of the members, shall be read section by section on the third (Article IV, Section 19) and require a majority of all the members elected to each house to pass; revenue-raising bills require three-fifths of all members elected to each house (Article IV, Section 25).

EMERGENCY (SPECIAL) LEGISLATIVE SESSIONS

The Oregon Constitution provides three methods by which the Legislative Assembly may be called into session outside of its regular session schedule, one initiated by members of the Legislative Assembly itself, and two initiated by the Governor.

Initiated by Legislative Assembly

Article IV, Section 10a of the Oregon Constitution, and ORS 171.015, outline the procedure by which the Legislative Assembly may call itself into emergency session, also called a special session (NOTE – an Article IV, Section 10a special session should not be confused with an Article X-A catastrophic disaster emergency session called by the Governor, as explained below). The process begins when at least one member from each chamber files a written request with the Legislative Administrator that includes a statement justifying the need for special session. The request triggers the following:

- The Legislative Administrator sends a ballot form, by certified mail, to each member asking whether they want a special session. The ballot form must identify who requested the session, a copy of ORS 171.015, a statement describing the emergency, and must be dated and state the 14-day deadline to return the ballot;
- Ballots must be filled out, signed, and returned to the Chief Clerk of the House or Secretary of the Senate, respectively, by 5:00 PM on the 14th day after ballots are sent. These officers verify signatures and note time received (*NOTE – once a member returns their ballot, they may not change or revoke that ballot*);
- If the Chief Clerk of the House and Secretary of the Senate verify that a majority of members of each house indicate a desire to hold a special session, the presiding officers are immediately notified, *even if the 14-day limit has not been reached*;
- Following notification from the parliamentarians, the presiding officers must issue a proclamation convening and setting a date for the special session, which is required to begin within five days of receiving the notice, excluding the day the presiding officers receive notice, but including all legal holidays and weekends.

Initiated by the Governor

The Oregon Constitution, in Article V, Section 12, empowers the Governor “on extraordinary occasions” to convene the Legislative Assembly by proclamation. In such instances, the Legislative Assembly convenes on the date and time listed in the Governor’s proclamation and, once assembled, the Governor states the purpose for which they were convened. Once convened, the Legislative Assembly is NOT limited to considering matters concerning the purpose as identified by the Governor.

Regardless of whether the session was called by the Legislative Assembly by ballot or by the Governor by proclamation, the session is concluded once a majority of members of both chambers determines that the business for which they were called has been completed, as signified by adoption of a *sine die* resolution.

According to data from the Oregon Secretary of State, there have been 41 emergency (special) sessions since 1860. The length of each session has varied, with several lasting only one day to one stretching to over a month (37 days, 1980). It is also not uncommon for multiple emergency sessions to take place in a single year. In 2002, for instance, there were five separate special sessions from February to September,

totaling 52 days. The reasons for each emergency session have varied, but in more recent years have focused on the state budget and economic concerns.

WHAT CONSTITUTES AN “EMERGENCY”?

What qualifies as an emergency under Article IV, Section 10a is not defined in the Oregon Constitution. However, the Oregon Supreme Court did address it in *George v. Courtney*, 344 Or. 76 (2008). In that case, the Court determined that the term “emergency” is much broader than “discrete, unforeseen crises.” Instead, relying on the Webster’s Dictionary definition of “emergency,” the Court found that the Legislative Assembly can convene itself “if, in the opinion of the requisite number of legislators, a combination of circumstances has resulted in a need for immediate action, there appears to be a pressing need to convene (whatever the nature and source of that need), or a distressing event or condition has arisen, even if the possibility of that event or condition had been anticipated.” Furthermore, nothing in the Oregon Constitution “requires the legislators to consult each other, agree on, or give notice of the circumstances that constitute an emergency,” though the Legislative Assembly has voluntarily required such action via statute in ORS 171.015. Therefore, given the Court’s reasoning in *George*, a court is unlikely to second guess the Legislative Assembly’s decision to convene itself under Article IV, Section 10a and ORS 171.015 after the Assembly determines that an emergency exists.

Oregon Courts have not addressed what constitutes an “extraordinary occasion” for the Governor to convene the Legislative Assembly under Article V, Section 12. However, the deference shown to the Assembly by the Supreme Court in *George* suggests that it will largely be left to the Governor to determine what circumstances qualify as an “extraordinary occasion.” The conclusion that the Governor has great discretion to determine when a special session is needed finds support in an opinion of the Oregon Attorney General from 1972. In that opinion, 36 Or. Op. Atty. Gen. 140, the Department of Justice argued that the Governor may call the Legislative Assembly into session at “his sole discretion, and no one may question his judgment in exercising this power under Article V, Section 12 of the Oregon Constitution.”

EMERGENCY SESSIONS FOLLOWING CATASTROPHIC DISASTER DECLARATION

Article X-A, Sections 1 through 6 of the Oregon Constitution outlines special procedures and powers that may be utilized by the Governor and the Legislative Assembly following the declaration of a “catastrophic disaster.” (NOTE – this should not be confused with the standard procedure for calling a special session under Article IV, Section 10a of the Oregon Constitution). A catastrophic disaster is defined in Article X-A, Section 1 as a natural or human-caused event that involves extraordinary levels of death, injury, property damage, or disruption of daily life, and that severely affects the population, infrastructure, environment, economy, or government functioning of the State of Oregon. Article X-A, Section 1(2) specifies that such an event may include, but is not

limited to: acts of terrorism; earthquakes; floods; public health emergencies; tsunamis; volcanic eruptions; or wars.

In addition to granting additional powers and authorities, Article X-A limits the scope of what the Legislative Assembly may do during a catastrophic disaster special session to actions necessary to implement the Governor's immediate response, as well as actions necessary to aid recovery from the disaster.

The Governor may invoke the provisions of Article X-A by declaration that a catastrophic disaster has occurred, including specification of the nature of the disaster. Except in cases where the Legislative Assembly is already in session or is scheduled to convene within the next 30 days, the Governor is required to convene the Legislative Assembly in emergency session by proclamation as provided by Article V, Section 12.

During an emergency session convened under a catastrophic disaster declaration, there are several procedures that differ from regular sessions or normal emergency (special) legislative sessions, including:

- *Location* – the Legislative Assembly may convene in a place other than the Capitol building *if the Governor or Legislative Assembly determine the Capitol is inaccessible* (Article X-A, Section 3(1));
- *Quorum* – if unable to compel the attendance of two-thirds of members of each house *because the disaster has made it impossible to locate members or impossible for them to attend*, two-thirds of the members of each house who are able to attend constitutes a quorum to do business (Article X-A, Section 3(2));
- *Reading Bills* – the number constituting a quorum may suspend provisions requiring reading bills on three separate days and reading bills in their entirety in same manner as two-thirds may do so under normal procedures (Article X-A, Section 3(3));
- *Number of Votes Required to Pass Measures* – if the disaster has made it impossible for at least 40 members of the House and 20 members of the Senate members to attend, then three-fifths of the members of each house able to attend a session shall be required to pass every bill or joint resolution (Article X-A, Section 3(4));
- *Emergency Clauses* – notwithstanding Article IX, Section 1(a), the Legislative Assembly may declare an emergency in any bill regulating taxation or exemption, including bills that decrease/suspend taxes or postpone tax due dates (Article X-A, Section 3(5));
- *Participation by Electronic Means* – members of the Legislative Assembly who cannot be physically present shall be considered in attendance if able to participate in the session through electronic or other means that enable both themselves and other participants to hear or read proceedings as they occur, and hear or read votes as they occur (Article X-A, Section 5);
- *Use of State Highway Fund Revenues* – the Legislative Assembly may enact laws authorizing use of revenues restricted by Article IX, Section 3(a) for purposes other than authorized by that section (Article X-A, Section 4(a));

- *Use of Moneys Subject to Kicker for Disaster Response* – a vote equal to the number constituting a quorum of each house may appropriate moneys that otherwise would be returned to taxpayers under Article IX, Section 14, provided it is allocated to state agencies for disaster response (Article X-A, Section 4(b));
- *Exceeding Constitutional Debt Limits* – the Legislative Assembly may lend the credit of the state or create debts or liabilities in amounts considered necessary to provide adequate disaster response (Article X-A, Section 4(c));
- *Suspend Local Government Distributions* – by a three-fifths vote, the Legislative Assembly may suspend provisions under Article XI, Section 15, requiring payments to local governments or tax distributions to local governments (Article X-A, Section 4(d) and 4(e));
- *Allocation of State Lottery Proceeds* – notwithstanding Article XV, Section 4, the Legislative Assembly may allocate Lottery proceeds for any purpose, and in any ratio, determined necessary to provide disaster response (Article X-A, Section 4(f)).

An emergency session called under a catastrophic disaster declaration is limited to 30 days but may be extended by approval of three-fifths of members able to attend. This extension must be in the form of a bill, approved by both houses and presented to the Governor (who may veto the bill), and must include an end date and provisions considered necessary to transition to compliance with constitutional provisions overridden under the disaster declaration. The Governor may not invoke provisions of Article X-A more than once for the same catastrophic disaster.

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