

LEGAL REVIEW NOTE

LC#: LC1916, To Legal Review Copy, as of February 14, 2015

Short Title: Revise laws related to legislative calendar

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CONFORMITY WITH STATE AND FEDERAL CONSTITUTIONS

*This review is intended to inform the bill draft requestor of potential constitutional conformity issues that may be raised by the bill as drafted. This review **IS NOT** dispositive of the issue of constitutional conformity and the general rule as repeatedly stated by the Montana Supreme Court is that an enactment of the Legislature is presumed to be constitutional unless it is proven beyond a reasonable doubt that the enactment is unconstitutional. See Alexander v. Bozeman Motors, Inc., 356 Mont. 439, 234 P.3d 880 (2010); Eklund v. Wheatland County, 351 Mont. 370, 212 P.3d 297 (2009); St. v. Pyette, 337 Mont. 265, 159 P.3d 232 (2007); and Elliott v. Dept. of Revenue, 334 Mont. 195, 146 P.3d 741 (2006).*

As required pursuant to section 5-11-112(1)(c), MCA, it is the Legislative Services Division's statutory responsibility to conduct "legal review of draft bills". The comments noted below regarding conformity with state and federal constitutions are provided to assist the Legislature in making its own determination as to the constitutionality of the bill. The comments are based on an analysis of jurisdictionally relevant state and federal constitutional law as applied to the bill. The comments are not written for the purpose of influencing whether the bill should become law but are written to provide information relevant to the Legislature's consideration of this bill. The comments are not a formal legal opinion and are not a substitute for the judgment of the judiciary, which has the authority to determine the constitutionality of a law in the context of a specific case.

Legal Reviewer Comments:

LC1916, as drafted, requires that the Legislature shall meet in January of each odd numbered year for no more than 6 legislative days to organize and to adopt rules and a budget for the legislative session. Section 1(1). LC1916 provides that upon recess, the House and Senate taxation committee shall meet for the purpose of adopting a standing committee report on the revenue estimating resolution and the joint subcommittees shall meet and hold public hearings to prepare recommendations to the full House appropriations committee, which shall meet and adopt a standing committee report. Section 1(2).

Upon receipt of the standing committee report from the House appropriations and House or

Senate taxation committee, the Legislature shall reconvene for the purpose of adopting a balanced budget for fiscal year 2018. Section (1)(3). LC1916 requires that the Legislature shall meet only as necessary to adopt a balanced budget and shall recess upon completion. Section 1(3).

LC1916 further requires that the Legislature shall reconvene in January of even-numbered years to organize committees and to consider general legislation and a biennial budget.

Because LC1916 requires the Legislature to meet in both even and odd-numbered years (annual sessions), LC1916 may raise potential constitutional conformity issues with Article V, section 6, of the Montana Constitution, which provides:

Section 6. Sessions. *The legislature shall meet each odd-numbered year in regular session of not more than 90 legislative days.* Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor or at the written request of a majority of the members. (emphasis added)

The general rule in Montana is that the Constitution is a limit on rather than a grant of legislative authority. See State ex rel. Evans v. Stewart, 53 Mont. 18, 161 P. 309 (1916), and State ex rel. DuFresne v. Leslie, 100 Mont. 449, 50 P.2d 959 (1935). Under this general rule, the Legislature is free to act in any lawful manner in any area that is not constitutionally restricted.

After only one annual session in 1973, Montanans, at the general election held November 5, 1974, approved Constitutional Initiative No. 1, with the following amendments to Article V, section 6, for the purpose of eliminating the constitutional language that authorized the Legislature to convene in regular 60-day annual sessions and providing for biennial regular legislative sessions of not more than 90 days in each odd-numbered year:

Section 6. Sessions. ~~The legislature shall be a continuous body for two-year periods beginning when newly elected members take office. Any business, bill, or resolution pending at adjournment of a session shall carry with the same status to any other session of the legislature during the biennium.~~ The legislature shall meet at least once a year each odd-numbered year in regular session of not than ~~60~~ 90 legislative days. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor at the written request of a majority of the members. (Constitutional Initiative No. 1, November, 1974)

The Montana Supreme Court has recently stated: "[t]his Court applies the same rules in the construction of the Constitution that it applies in the construction of statutes. Martien v. Porter, 68 Mont. 450, 464, 219 P. 817, 819 (1923); Keller v. Smith, 170 Mont. 399, 404, 553 P.2d 1002, 1006 (1976). "[T]he intent of the framers of the Constitution is controlling and that intent must first be determined from the plain language of the words used." State ex rel. Racicot v. District Court, 243 Mont. 379, 384, 794 P.2d 1180, 1183 (1990)." Cross v. Van Dyke, 375 Mont. 535, _ P.3d _ (2014).

The plain language of Article V, section 6, requires that the Legislature meet in regular session each odd-numbered year for not more than 90 legislative days. The Constitution allows the Legislature to extend the length of any subsequent session. The Constitution further authorizes the convening of the Legislature in special session either by the Governor or by the majority of the membership of the Legislature.

However, post 1974 Constitutional Amendment No. 1, Article V, section 6, is silent regarding whether the Legislature can meet in a regular session outside of an odd-numbered year. Absent clear constitutional direction, a court would first look to the intent of the framers of the constitution, and in this case, a court would look at the intent of the framers of the 1974 voter approved Constitutional Amendment No. 1, which eliminated the 1972 constitutional language that authorized the Legislature to convene in regular 60-day annual sessions. Historical documentation, including the voter's pamphlet on the 1974 Constitutional Amendment No. 1 document that the intent of the proponents was to eliminate the original authority under the 1972 Montana Constitution for the Legislature to convene regular annual sessions.

A court would also likely look at the failed ballot box attempts by the Legislature in 1981 and 1988, that put two Constitutional Amendments before the voters to reinstate annual regular sessions and split regular sessions, as potential confirmation that the purpose of the of the 1974 Constitutional Amendment No. 1 language was to preclude the Legislature from convening annual regular sessions, given that subsequent Legislatures were attempting to constitutionally reinstate annual regular sessions.

The Montana Supreme Court has also examined a somewhat analogous section under the 1889 Montana Constitution that was silent regarding whether the Legislature could meet in regular sessions outside of the alternate years and concluded that for ordinary purposes of a regular session, the Legislature may not convene more often than once in 2 years. State ex rel. Bennett v. St. Bd. of Examiners, 40 Mont. 59, 104 P. 1055 (1909).

Consequently, LC1916, by authorizing the Legislature to meet in annual sessions, may raise potential constitutional conformity issues with Article V, section 6, of the Montana Constitution.