

NEVADA LEGISLATURE

Thirty-Second Special Session, 2020

ASSEMBLY DAILY JOURNAL

THE SECOND DAY

CARSON CITY (Saturday), August 1, 2020

Assembly called to order at 12:51 p.m.

Mr. Speaker presiding.

Roll called.

All present.

Prayer by the Chaplain, Rajan Zed.

Om

bhur bhuvah svah

tat savitur varenyam

bhargo devasya dhimahi

dhiyo you nah prachodayat

We meditate on the transcendental glory of the deity supreme, who is inside the heart of the earth, inside the life of the sky and inside the soul of the heaven. May He stimulate and illuminate our minds.

Asato ma sad gamaya

Tamaso ma jyotir gamaya

Mrityor mamrtam gamaya

Lead us from the unreal to the real. Lead us from darkness to light. Lead us from death to immortality.

tasmadasaktah satatam karyam karma samacara

asakto hyacarankarma paramapnoti purusah.

karmanaiva hi samsiddhimasthita janakadayah

lokasangrahavevapi sampasyankartumarhasi

Strive constantly to serve the welfare of the world; by devotion to selfless one attains the supreme goal of life. Do your work with the welfare of others always in mind.

Om saha naavavatu

Saha nau bhunaktu

Saha viiryan karavaavahai

Tejasvi naavadhiitamastu

Maa vidhvishhaavahai

May we be protected together. May we be nourished together. May we work together with great vigor. May our study be enlightening. May no obstacle arise between us.

samani va akutih
samana hridayani vah
samanam astu vo mano
yatha vah susahasti

United your resolve, united your hearts, may your spirits be at one, that you may long together dwell in unity and concord.

Om Shanti, Shanti, Shanti.
Peace, Peace, Peace be unto all.
Om.

AMEN.

Pledge of allegiance to the Flag.

Assemblywoman Benitez-Thompson moved that further reading of the Journal be dispensed with and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, August 1, 2020

To the Honorable the Assembly:

I have the honor to inform your honorable body that the Senate on this day passed Senate Joint Resolution No. 1.

SHERRY RODRIGUEZ
Assistant Secretary of the Senate

MOTIONS, RESOLUTIONS AND NOTICES

Senate Joint Resolution No. 1

Assemblywoman Benitez-Thompson moved that Senate Joint Resolution No. 1 be taken from the Resolution File and placed on the Chief Clerk's desk.

Motion carried.

Assemblywoman Benitez-Thompson moved that Ben Margiott of KRNV NEWS 4 be accepted as an accredited press representative, assigned space at the press table in the Assembly Chamber, and allowed use of appropriate broadcasting facilities.

Motion carried.

Assemblywoman Benitez-Thompson moved that Assembly Bill No. 3 be taken from the Chief Clerk's desk and rereferred to the Committee of the Whole.

Motion carried.

Assemblywoman Benitez-Thompson moved the Assembly resolve itself into a Committee of the Whole for the purpose of considering Assembly Bill No. 3.

Motion carried.

COMMITTEE OF THE WHOLE IN SESSION

At 12:57 p.m.
Chair Frierson presiding.
Quorum present.
Assembly Bill No. 3.

(REMARKS WILL BE INCLUDED IN THE FINAL JOURNAL.)

Chair Frierson announced if there were no objections, the Committee of the Whole would recess subject to the call of the Chair.

Motion carried.

Committee of the Whole in recess at 3:40 p.m.

COMMITTEE OF THE WHOLE IN SESSION

At 4:26 p.m.
Chair Frierson presiding.
Quorum present.

(REMARKS WILL BE INCLUDED IN THE FINAL JOURNAL.)

Assemblyman Yeager moved to amend and do pass Assembly Bill No. 3.
Assemblyman Flores seconded the motion.
Motion carried.

On motion of Assemblywoman Benitez-Thompson, the Committee did rise and report back to the Assembly.

ASSEMBLY IN SESSION

At 4:30 p.m.
Mr. Speaker presiding.
Quorum present.

REPORTS OF COMMITTEES

Mr. Speaker:

Your Committee of the Whole, to which was rereferred Assembly Bill No. 3, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

JASON FRIERSON, *Chair*

GENERAL FILE AND THIRD READING

Assembly Bill No. 3.
Bill read third time.

The following amendment was proposed by the Committee of the Whole:
Amendment No. 3.

AN ACT relating to public safety; authorizing a person to record law enforcement activity in certain circumstances; revising provisions relating to the use of physical force by a peace officer; requiring a peace officer to intervene to prevent the use of unjustified physical force by another peace officer in certain circumstances and to report the observation of the use of

unjustified physical force by another peace officer; requiring law enforcement agencies to adopt a written policy regarding the drug and alcohol testing of a peace officer in certain circumstances; providing that the newly effective provisions of law reducing the maximum period of probation or suspension of sentence that may be imposed upon a person apply to persons sentenced on or after July 1, 2020; requiring law enforcement agencies to provide a report to the Legislature containing certain information relating to traffic stops and other stops by law enforcement officers and the software used to process certain information during such traffic stops and other stops; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Section 1 of this bill authorizes a person who is not under arrest or in the custody of a peace officer to record law enforcement activity in certain circumstances and prohibits a peace officer from interfering with a person’s lawful recording of a law enforcement activity.

Existing law provides that when a peace officer is arresting a person, the peace officer is prohibited from subjecting the person to more restraint than is necessary to arrest and detain the person. If the person flees or forcibly resists, the peace officer is authorized to use all means necessary to effect the arrest. (NRS 171.122) Existing law also authorizes a peace officer to use a choke hold on another person only if: (1) the peace officer’s employer authorizes the use of a choke hold; and (2) the peace officer completed training regarding the proper use of a choke hold and is certified for its use. (NRS 289.810)

Section 2 of this bill provides that when a peace officer is arresting a person and the person flees or forcibly resists, the peace officer is generally authorized to use only the amount of reasonable force necessary to effect the arrest.

Section 4 of this bill prohibits a peace officer from: (1) using a choke hold on another person; or (2) placing a person who is in the custody of the peace officer in any position that compresses his or her airway or restricts his or her ability to breathe. **Section 4** also requires a peace officer to monitor any person who is in the custody of the peace officer for any signs of distress and to take any actions necessary to place such a person in a recovery position if he or she appears to be in distress or indicates that he or she cannot breathe. **Section 4** further requires a peace officer to ensure that medical aid is rendered to any person who is injured by the use of physical force by the peace officer.

Sections 7 and 12 of this bill make conforming changes.

Section 5 of this bill requires a peace officer to: (1) intervene to prevent or stop another peace officer from using unjustified physical force if the peace officer observes or reasonably should have observed the use of such unjustified physical force and it is safe for the peace officer to intervene; and (2) if the peace officer who observes the use of unjustified physical force is a supervisor of the peace officer using the unjustified physical force, issue a direct order to stop the use of such physical force. **Section 5** also requires any peace officer who observes the use of unjustified physical force to report the observation to his or her immediate supervisor or, if the observation involves his or her

immediate supervisor, the supervisor of his or her immediate supervisor. **Section 5** additionally prohibits a member of a law enforcement agency from disciplining or retaliating in any way against a peace officer solely for intervening in the use of unjustified physical force or reporting the observation of the use of unjustified physical force. **Section 5** further requires each law enforcement agency to train its peace officers on the duty to intervene in the use of unjustified physical force and the reporting of any observation of the use of unjustified physical force.

Section 6 of this bill: (1) requires each law enforcement agency to adopt a written policy regarding the drug and alcohol testing of a peace officer following an officer-involved shooting or when the conduct of a peace officer results in substantial bodily harm to or the death of another person; and (2) establishes certain requirements concerning such a written policy.

Section 9 of this bill requires each law enforcement agency in this State to provide a report to the Legislature on or before November 1, 2020, that includes certain information relating to: (1) traffic stops and other stops by law enforcement officers; and (2) the software used to process the identity or driver's license number of a person during such a traffic stop or other stop.

Section 34 of Assembly Bill No. 236 of the 2019 Legislative Session reduced the maximum period of probation or suspension of sentence that can be imposed upon a person. Such a change became effective on July 1, 2020. (Chapter 633, Statutes of Nevada 2019, at pages 4399 and 4488) **Section 8** of this bill provides that such a change applies to: (1) any offense committed on or after July 1, 2020; and (2) any offense committed before July 1, 2020, if the person is sentenced on or after July 1, 2020. **Section 10** of this bill provides that any person who is sentenced on or after July 1, 2020, and before the date that this bill becomes effective is entitled to have his or her period of probation or suspension of sentence reduced to the maximum applicable period set forth pursuant to the change in law that became effective on July 1, 2020.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 171 of NRS is hereby amended by adding thereto a new section to read as follows:

1. *A person who is not under arrest or in the custody of a peace officer may record a law enforcement activity and maintain custody and control of that recording and any property or instruments used by the person to record a law enforcement activity. A person who is under arrest or in the custody of a peace officer does not, by that status alone, forfeit the right to have any such recordings, property or instruments maintained and returned to him or her. This subsection must not be construed to authorize a person to engage in actions that ~~physically~~ interfere with or obstruct a law enforcement activity or otherwise violate any other law in an effort to record a law enforcement activity.*

2. *A peace officer shall not act to interfere with a person's recording of a law enforcement activity, including, without limitation, by:*

- (a) Intentionally preventing or attempting to prevent the person from recording a law enforcement activity;*
- (b) Threatening the person for recording a law enforcement activity;*
- (c) Commanding that the person cease recording a law enforcement activity when the person was nevertheless authorized by law to record the law enforcement activity;*
- (d) Stopping, seizing or searching the person because he or she recorded a law enforcement activity; or*
- (e) Unlawfully seizing property or instruments used by the person to record a law enforcement activity, unlawfully destroying or seizing any recorded image of a law enforcement activity or copying such a recording of a law enforcement activity without the consent of the person who recorded it or obtaining approval from an appropriate court.*

3. *As used in this section:*

- (a) "Law enforcement activity" means any activity by a peace officer acting under the color of law.*
- (b) "Peace officer" means any person upon whom some or all of the powers of a peace officer are conferred pursuant to NRS 289.150 to 289.360, inclusive.*
- (c) "Record" means to capture or attempt to capture any moving or still image, sound or impression through the use of any recording device, camera or any other device capable of capturing audio or moving or still images, or by means of written notes or observations. The term includes, without limitation, the capturing of or the attempt to capture any moving or still image, sound or impression through the use of any such device for the purpose of broadcasting an event or occurrence in real time.*

Sec. 2. NRS 171.122 is hereby amended to read as follows:

171.122 1. Except as otherwise provided in subsection 2, the warrant must be executed by the arrest of the defendant. The officer need not have the warrant in the officer's possession at the time of the arrest, but upon request the officer must show the warrant to the defendant as soon as possible. If the officer does not have a warrant in the officer's possession at the time of the arrest, the officer shall then inform the defendant of the officer's intention to arrest the defendant, of the offense charged, the authority to make it and of the fact that a warrant has or has not been issued. The defendant must not be subjected to any more restraint than is necessary for the defendant's arrest and detention. If the defendant either flees or forcibly resists, the officer may, except as otherwise provided in NRS 171.1455, use ~~full~~ **only the amount of reasonable force** necessary ~~means~~ to effect the arrest.

2. In lieu of executing the warrant by arresting the defendant, a peace officer may issue a citation as provided in NRS 171.1773 if:

- (a) The warrant is issued upon an offense punishable as a misdemeanor;

(b) The officer has no indication that the defendant has previously failed to appear on the charge reflected in the warrant;

(c) The defendant provides satisfactory evidence of his or her identity to the peace officer;

(d) The defendant signs a written promise to appear in court for the misdemeanor offense; and

(e) The officer has reasonable grounds to believe that the defendant will keep a written promise to appear in court.

3. The summons must be served upon a defendant by delivering a copy to the defendant personally, or by leaving it at the defendant's dwelling house or usual place of abode with some person then residing in the house or abode who is at least 16 years of age and is of suitable discretion, or by mailing it to the defendant's last known address. In the case of a corporation, the summons must be served at least 5 days before the day of appearance fixed in the summons, by delivering a copy to an officer or to a managing or general agent or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the corporation's last known address within the State of Nevada or at its principal place of business elsewhere in the United States.

Sec. 3. Chapter 193 of NRS is hereby amended by adding thereto the provisions set forth as sections 4 and 5 of this act.

Sec. 4. 1. *In carrying out his or her duties, a peace officer shall not use a choke hold on another person.*

2. A peace officer shall not place a person who is in the custody of the peace officer in any position which compresses his or her airway or restricts his or her ability to breathe. A peace officer shall monitor any person who is in the custody of the peace officer for any signs of distress and shall take any actions necessary to place such a person in a recovery position if he or she appears to be in distress or indicates that he or she cannot breathe.

3. If a peace officer, in carrying out his or her duties, uses physical force on another person, the peace officer shall ensure that medical aid is rendered to any person who is injured by the use of such physical force as soon as practicable.

4. As used in this section:

(a) "Choke hold" means:

(1) A method by which a person applies sufficient pressure to another person to make breathing difficult or impossible, including, without limitation, any pressure to the neck, throat or windpipe that may prevent or hinder breathing or reduce intake of air; or

(2) Applying pressure to a person's neck on either side of the windpipe, but not the windpipe itself, to stop the flow of blood to the brain via the carotid arteries.

(b) “Peace officer” means any person upon whom some or all of the powers of a peace officer are conferred pursuant to NRS 289.150 to 289.360, inclusive.

(c) “Physical force” means the application of physical techniques, chemical agents or weapons to another person.

Sec. 5. 1. Except as otherwise provided in this subsection, a peace officer shall, without regard for chain of command, intervene to prevent or stop another peace officer from using physical force that is not justified in pursuance of the other peace officer’s law enforcement duties in carrying out the arrest of a person, placing a person under detention, taking a person into custody or booking a person. The duty to intervene in the use of physical force that is not justified as required by this subsection only applies if:

(a) A peace officer observes the use of physical force that is not justified or reasonably should have observed the use of physical force that is not justified; and

(b) The circumstances are such that it is safe for the peace officer to intervene.

2. If a peace officer who observes the use of physical force that is not justified is a supervisor of the peace officer who is using such physical force, the peace officer making the observation shall issue a direct order to stop the use of such physical force.

3. A peace officer who observes the use of physical force that is not justified shall report the observation to his or her immediate supervisor unless the observation involves his or her immediate supervisor, in which case the peace officer shall report the observation to the supervisor of his or her immediate supervisor. Such a report must:

(a) Include, without limitation:

(1) The date, time and location of the incident;

(2) The identity, if known, and a description of the participants; and

(3) A description of the actions taken as a result of the observation.

(b) Be made in writing not later than 10 days after the occurrence of the use of physical force and observation and appended to all other reports of the incident.

4. A member of a law enforcement agency shall not discipline or retaliate in any way against a peace officer solely for:

(a) Intervening in the use of physical force that is not justified as required by subsection 1; or

(b) Reporting the observation of the use of physical force that is not justified as required by subsection 3.

5. Each law enforcement agency in this State shall train its peace officers on the provisions of this section.

6. As used in this section:

(a) “Peace officer” means any person upon whom some or all of the powers of a peace officer are conferred pursuant to NRS 289.150 to 289.360, inclusive.

(b) “Physical force” has the meaning ascribed to it in section 4 of this act.

Sec. 6. Chapter 289 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Each law enforcement agency shall adopt a written policy regarding the drug and alcohol testing of a peace officer following an officer-involved shooting or when the conduct of a peace officer results in substantial bodily harm to or the death of another person. The written policy adopted by the law enforcement agency must include the following requirements:

(a) Each peace officer who is involved in an officer-involved shooting or whose conduct resulted in substantial bodily harm to or the death of another person must submit to drug and alcohol testing, including, without limitation, testing for the use of cannabis, prescription drugs and illegal drugs; and

(b) The drug and alcohol testing must be completed as soon as practicable after the officer-involved shooting or the conduct of the peace officer that resulted in substantial bodily harm to or the death of another person, but not later than the end of the involved peace officer’s shift.

2. As used in this section, “officer-involved shooting” means any instance when a peace officer discharges his or her firearm during the performance of his or her official duties or in the line of duty and thereby causes injury or death to one or more persons.

Sec. 7. NRS 289.010 is hereby amended to read as follows:

289.010 As used in this chapter, unless the context otherwise requires:

1. “Administrative file” means any file of a peace officer containing information, comments or documents about the peace officer. The term does not include any file relating to an investigation conducted pursuant to NRS 289.057 or a criminal investigation of a peace officer.

2. ~~“Choke hold” means the holding of a person’s neck in a manner specifically intended to restrict the flow of oxygen or blood to the person’s lungs or brain. The term includes the arm bar restraint, carotid restraint and lateral vascular neck restraint.~~

~~3.~~ “Law enforcement agency” means any agency, office, bureau, department, unit or division created by any statute, ordinance or rule which:

(a) Has a duty to enforce the law; and

(b) Employs any person upon whom some or all of the powers of a peace officer are conferred pursuant to NRS 289.150 to 289.360, inclusive.

~~4.~~ 3. “Peace officer” means any person upon whom some or all of the powers of a peace officer are conferred pursuant to NRS 289.150 to 289.360, inclusive.

~~5.~~ 4. “Punitive action” means any action which may lead to dismissal, demotion, suspension, reduction in salary, written reprimand or transfer of a peace officer for purposes of punishment.

Sec. 8. Chapter 633, Statutes of Nevada 2019, at page 4488, is hereby amended by adding thereto a new section to be designated as section 135.3, immediately following section 135, to read as follows:

Sec. 135.3. *The amendatory provisions of section 34 of this act apply to:*

1. *An offense committed on or after July 1, 2020; and*

2. *An offense committed before July 1, 2020, if the person is sentenced on or after July 1, 2020.*

Sec. 9. 1. On or before November 1, 2020, each law enforcement agency in this State shall provide a report containing the following information to the Director of the Legislative Counsel Bureau for transmittal to the 81st Session of the Nevada Legislature:

(a) Information concerning traffic stops and other stops, including, without limitation:

(1) The way in which traffic stops and other stops are recorded and what is included in such recordings;

(2) The period for which recordings of traffic stops and other stops are maintained; and

(3) The information that is collected and maintained relating to traffic stops and other stops, including, without limitation, any information relating to the identity of a person and any geographic information relating to the stop.

(b) Information concerning the software used to process the identity or driver's license number of a person during a traffic stop or other stop, including, without limitation:

(1) The name of the provider of the software used in law enforcement vehicles and law enforcement dispatch offices to process the identity or driver's license number of a person; and

(2) Information regarding the data collected through the use of the software, including, without limitation:

(I) Whether the software tracks queries through the use of unique identifiers such as identifiers for software users;

(II) Whether there are any limitations on the history of the data collected through the use of the software, including, without limitation, whether there is only a certain amount of history that is stored and whether the history is ever cleared; and

(III) Whether there are any limitations on accessing the data collected through the use of the software, including, without limitation, who is authorized to request the data and how the data can be requested.

2. As used in this section:

(a) "Law enforcement agency" has the meaning ascribed to it in NRS 289.010.

(b) "Other stop" means any occasion when a person is halted by a law enforcement officer for an alleged violation of law, or any other purpose.

(c) "Traffic stop" means any occasion when the driver of a motor vehicle is halted by a law enforcement officer for an alleged traffic violation or infraction, or any other purpose.

Sec. 10. If, pursuant to the provisions of NRS 176A.500 as that section existed before July 1, 2020, a person is sentenced on or after July 1, 2020, and before the effective date of this act to a period of probation or suspension of

sentence that exceeds the maximum period of probation set forth in NRS 176A.500 as that section existed on July 1, 2020, the person is entitled to have his or her period of probation or suspension of sentence reduced to the maximum applicable period of probation or suspension of sentence set forth in NRS 176A.500 as that section existed on July 1, 2020.

Sec. 11. Notwithstanding the provisions of NRS 218D.430 and 218D.435, a committee may vote on this act before the expiration of the period prescribed for the return of a fiscal note in NRS 218D.475. This section applies retroactively from and after July 30, 2020.

Sec. 12. NRS 289.590 and 289.810 are hereby repealed.

Sec. 13. This act becomes effective upon passage and approval.

TEXT OF REPEALED SECTIONS

289.590 Training in proper use of choke hold as condition of certification; annual training and recertification; regulations.

1. As a condition of the certification of a peace officer employed by an agency that authorizes the use of a choke hold in the course of the peace officer's duties, the Peace Officers' Standards and Training Commission shall require the peace officer to be trained in the proper use of the choke hold. In addition, the Commission shall require annual training and recertification in the proper use of the choke hold if the agency employing the peace officer continues to authorize the official use of the choke hold.

2. The Commission shall adopt regulations regarding the minimum training and testing required to comply with the requirements of subsection 1 and the manner in which each such agency shall demonstrate its continuing compliance with the requirements of subsection 1.

289.810 Peace officer prohibited from using choke hold; exceptions; agencies required to adopt regulations.

1. A peace officer shall not use a choke hold on any other person unless:

(a) The agency employing the peace officer authorizes the use of the choke hold by its peace officers in the course of their duties; and

(b) The peace officer has successfully completed training in the proper use of the choke hold and holds current certification for its use by the agency which employs the peace officer.

2. If a law enforcement agency finds that a peace officer has violated the provisions of subsection 1, the peace officer is subject to such disciplinary action as is provided for such an offense by the agency.

3. Each agency in this state which employs a peace officer shall adopt regulations which govern whether the use of a choke hold by its officers during the course of their duties is authorized. If an agency authorizes such a use of a choke hold, the agency shall also adopt regulations which specifically address:

(a) The manner in which a peace officer, certified for use of a choke hold, is authorized to use the hold in the course of the peace officer's duties;

(b) The manner in which records of training, certification and recertification will be maintained to ensure compliance with any applicable statutory or other related requirements; and

(c) The consequences of unauthorized or uncertified use of a choke hold.

Assemblyman Yeager moved the adoption of the amendment.

Remarks by Assemblyman Yeager.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 3.

Bill read third time.

Remarks by Assemblymen Roberts, Nguyen, Tolles, Miller, Ellison, Krasner, Flores, and Frierson.

(REMARKS WILL BE INCLUDED IN THE FINAL JOURNAL.)

Roll call on Assembly Bill No. 3:

YEAS—38.

NAYS—Edwards, Ellison, Titus, Wheeler—4.

Assembly Bill No. 3 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Mr. Speaker announced if there were no objections, the Assembly would recess subject to the call of the Chair.

Assembly in recess at 4:56 p.m.

ASSEMBLY IN SESSION

At 9:04 p.m.

Mr. Speaker presiding.

Quorum present.

REMARKS FROM THE FLOOR

Mr. Speaker requested the privilege of the Chair for the purpose of making the following remarks:

There have been questions as to whether the Legislature has the power to pass joint resolutions proposing state constitutional amendments at a special session convened by the Governor, if those proposed amendments are not “related to the business for which the Legislature has been specially convened.” This legal opinion from the LCB Legal Division addresses those legal questions and concludes that the Legislature has the power to pass joint resolutions proposing state constitutional amendments at a special session, regardless of whether such joint resolutions are “related to the business for which the Legislature has been specially convened.”

August 1, 2020

Nevada Assembly
Assembly Chambers
Dear Members of the Assembly:

You have asked this office a legal question relating to special sessions of the Legislature convened by the Governor under Article 5, Section 9 of the Nevada Constitution. In particular, you have asked whether, at a special session convened by the Governor under Article 5, Section 9, the Legislature has the power to introduce, consider and pass any joint resolutions proposing state constitutional amendments under Article 16, Section 1 of the Nevada Constitution, regardless

of whether such joint resolutions are “related to the business for which the Legislature has been specially convened.” Nev. Const. art. 5, § 9.

As explained in the legal discussion below, based on the 2012 constitutional amendment that revised the state constitutional provisions governing special sessions, it is the opinion of this office that, at a special session convened by the Governor under Article 5, Section 9, the Legislature has the power to introduce, consider and pass any joint resolutions proposing state constitutional amendments under Article 16, Section 1, regardless of whether such joint resolutions are “related to the business for which the Legislature has been specially convened.” Nev. Const. art. 5, § 9.

DISCUSSION

Article 16, Section 1 authorizes the Legislature to propose any amendment or amendments to the Nevada Constitution, stating that:

Any amendment or amendments to this Constitution may be proposed in the Senate or Assembly; and if the same shall be agreed to by a Majority of all the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their respective journals, with the Yeas and Nays taken thereon, and referred to the Legislature then next to be chosen, and shall be published for three months next preceding the time of making such choice. And if in the Legislature next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as the Legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the Legislature voting thereon, such amendment or amendments shall, unless precluded by subsection 2 or section 2 of article 19 of this constitution, become a part of the Constitution.

Although Article 16, Section 1 authorizes the Legislature to propose constitutional amendments, it does not specify the type of legislative measure that must be used to make such proposals. When a state constitution does not specify the type of legislative measure that must be used to propose constitutional amendments, the general rule is that the legislative body may use a resolution adopted by both Houses to make such proposals. Mason’s Manual of Legislative Procedure § 145(2) (2010).

Consistent with this general rule, the Legislature has from its earliest sessions proposed state constitutional amendments by the use of resolutions. See Senate Journal, 3rd Sess., at 43, 48 (Nev. 1867); Senate Journal, 4th Sess., at 17, 27 (Nev. 1869). Even though the Legislature has consistently used resolutions to propose state constitutional amendments, it has not consistently used the same term to describe the resolutions. In the legislative sessions before 1919, the Legislature employed multiple terms to describe such resolutions, including “concurrent resolution,” “joint resolution,” “joint and concurrent resolution,” “conjoint resolution” and “proposal to amend the Constitution,” and sometimes the Legislature employed several of these terms within the same legislative session.¹ However, beginning with the 1919 legislative session, the Legislature adopted the practice of using only the term “joint resolution” to describe resolutions proposing state constitutional amendments, and the Legislature has consistently followed that practice since 1919. See, e.g., 1919 Nev. Stat., File Nos. 6, 19 & 20, at 478 & 486-87; 2019 Nev. Stat., File Nos. 40 & 44, at 4630 & 4636.

¹ See, e.g., 1869 Nev. Stat., File Nos. 1 & 2, at 307 (“Proposal to Amend the Constitution”); 1877 Nev. Stat., File No. 6, at 213-14 (“Conjoint Resolutions”); 1877 Nev. Stat., File No. 23, at 221 (“Concurrent Resolution”); 1879 Nev. Stat., File No. 6, at 149 (“Concurrent Resolution”); 1879 Nev. Stat., File No. 7, at 149 (“Conjoint Resolution”); 1879 Nev. Stat., File No. 26, at 166 (“Concurrent Resolution”); 1903 Nev. Stat., File No. 13, at 232 (“Joint and Concurrent Resolution”); 1903 Nev. Stat., File No. 23, at 240 (“Concurrent Resolution”).

Given that the Legislature has consistently followed the practice of using joint resolutions to propose state constitutional amendments for over a century, the legal issue is whether, at a special session convened by the Governor, the Legislature has the power to introduce, consider and pass any joint resolutions proposing state constitutional amendments, regardless of whether such joint resolutions are “related to the business for which the Legislature has been specially convened.” Nev. Const. art. 5, § 9.

As a general rule, the power of the Legislature at a special session is as broad as its power at a regular session, unless there are express constitutional limitations to contrary. See Richards Furniture Corp. v. Bd. of County Comm’rs, 196 A.2d 621, 625 (Md. 1964) (“It is generally held that in the absence of constitutional limitation, the legislative power of a Legislature, when convened in extraordinary session, is as broad as its powers in its regular sessions.”); Long v. State, 127 S.W. 208, 209 (Tex. Crim. App. 1910) (“In the absence of a constitutional provision limiting the same, the jurisdiction of the Legislature when convened in special session is as broad as at a regular session.”).

Under Article 4, Section 18 of the Nevada Constitution, the Legislature has the power to pass bills and joint resolutions at a regular session. Therefore, the Legislature also has the power to pass bills and joint resolutions at a special session, subject to any express constitutional limitations. Based on the 2012 constitutional amendment that revised the state constitutional provisions governing special sessions, we believe that, at a special session convened by the Governor, the Legislature has the power to introduce, consider and pass any joint resolutions proposing state constitutional amendments, regardless of whether such joint resolutions are “related to the business for which the Legislature has been specially convened.” Nev. Const. art. 5, § 9.

At the 2012 general election, the voters approved a state constitutional amendment that revised the state constitutional provisions governing special sessions (hereafter “2012 amendment”). The 2012 amendment was proposed and passed by the Legislature during the 2009 and 2011 legislative sessions. Assembly Joint Resolution No. 5 (A.J.R. 5), 2009 Nev. Stat., File No. 92, at 3282; 2011 Nev. Stat., File No. 33, at 3853.

The 2012 amendment added Article 4, Section 2A to the Nevada Constitution, which authorizes the Legislature to convene itself into a special session upon a petition signed by two-thirds of the members of each House. The 2012 amendment included the following language in Article 4, Section 2A:

1. The Legislature may be convened, on extraordinary occasions, upon a petition signed by two-thirds of the members elected to each House of the Legislature. A petition must specify the business to be transacted during the special session, indicate a date on or before which the Legislature is to convene and be transmitted to the Secretary of State. Upon receipt of one or more substantially similar petitions signed, in the aggregate, by the required number of members, calling for a special session, the Secretary of State shall notify all members of the Legislature and the Governor that a special session will be convened pursuant to this section.

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 specified in the petition and those necessary to provide for the expenses of the session.

A.J.R. 5, 2009 Nev. Stat., File No. 92, at 3284; 2011 Nev. Stat., File No. 33, at 3855 (emphasis added).

The 2012 amendment also revised the provisions governing special sessions convened by the Governor pursuant to Article 5, Section 9. The 2012 amendment included the following revisions to Article 5, Section 9:

~~{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.

A.J.R. 5, 2009 Nev. Stat., File No. 92, at 3286; 2011 Nev. Stat., File No. 33, at 3857 (emphasis added).

Thus, before the 2012 amendment, Article 5, Section 9 provided that, at a special session, “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.” Nev. Const. art. 5, § 9 (1864) (emphasis added). By contrast, after the 2012 amendment, Article 5, Section 9 now provides that “[a]t 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.” Nev. Const. art. 5, § 9 (emphasis added).

We believe that the 2012 amendment produces two significant results. First, the 2012 amendment removed the power of the Governor to call other legislative business to the attention of the Legislature during a special session. As a result, with regard to the Legislature’s consideration and passage of bills, the scope of the special session is limited to only those bills related to the business for which the Legislature has been specially convened and those bills necessary to provide for the expenses of the session. Therefore, we believe that if the Governor wants the Legislature to consider any other bills, the Governor would need to convene another special session under Article 5, Section 9 for the Legislature to consider other bills. Alternatively, the Legislature could convene itself into a special session upon a petition signed by two-thirds of the members of each House under Article 4, Section 2A to consider other bills.

Second, the 2012 amendment removed the provision stating that “the Legislature shall transact no legislative business” and replaced it with the provision stating that “the Legislature shall not introduce, consider or pass any bills.” Nev. Const. art. 5, § 9 (emphasis added). We believe that the use of the term “bills” and the omission of the term “resolutions” is notable because other provisions of the Nevada Constitution use both terms, such as “bills or joint resolutions” and “statute or resolution.” Nev. Const. art. 4, § 18, art. 19 § 1.

Based on the 2012 amendment, the Nevada Constitution expressly places limitations on the Legislature’s power at a special session only with regard to “bills,” stating that “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.” Nev. Const. art. 5, § 9 (emphasis added). By contrast, the Nevada Constitution does not place any limitations on the Legislature’s power at a special session with regard to resolutions.

Because the Nevada Constitution does not place any limitations on the Legislature’s power at a special session with regard to resolutions, the Legislature’s power to introduce, consider and pass any joint resolutions proposing state constitutional amendments at a special session is as broad as its power at a regular session. Nev. Const. art. 4, § 18, art. 16, § 1; Richards Furniture Corp. v. Bd. of County Comm’rs, 196 A.2d 621, 625 (Md. 1964) (“It is generally held that in the absence of constitutional limitation, the legislative power of a Legislature, when convened in extraordinary session, is as broad as its powers in its regular sessions.”); Long v. State, 127 S.W.

208, 209 (Tex. Crim. App. 1910) (“In the absence of a constitutional provision limiting the same, the jurisdiction of the Legislature when convened in special session is as broad as at a regular session.”).

Thus, because the term “resolutions” is omitted from Article 5, Section 9, we believe that a reasonable construction of the 2012 amendment means that, at a special session convened by the Governor, the Legislature has the power to introduce, consider and pass any joint resolutions or other resolutions, regardless of whether the resolutions are “related to the business for which the Legislature has been specially convened.” Nev. Const. art. 5, § 9. As a result, it is the opinion of this office that, at a special session convened by the Governor, the Legislature has the power to introduce, consider and pass any joint resolutions proposing state constitutional amendments, regardless of whether such joint resolutions are “related to the business for which the Legislature has been specially convened.”² Nev. Const. art. 5, § 9.

CONCLUSION

Based on the 2012 constitutional amendment that revised the state constitutional provisions governing special sessions, it is the opinion of this office that, at a special session convened by the Governor under Article 5, Section 9, the Legislature has the power to introduce, consider and pass any joint resolutions proposing state constitutional amendments under Article 16, Section 1, regardless of whether such joint resolutions are “related to the business for which the Legislature has been specially convened.” Nev. Const. art. 5, § 9.

If you have any further questions regarding this matter, please do not hesitate to contact this office.

Sincerely,
Kevin C. Powers
General Counsel

² Because the term “resolutions” is also omitted from Article 4, Section 2A, we believe that a reasonable construction of the 2012 amendment means that if the Legislature convenes itself into a special session upon a petition signed by two-thirds of the members of each House, the Legislature has the power at the special session to introduce, consider and pass any joint resolutions or other resolutions, regardless of whether the resolutions are “related to the business specified in the petition.” Nev. Const. art. 4, § 2A.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblywoman Benitez-Thompson moved that Senate Joint Resolution No. 1 be taken from the Chief Clerk’s desk and referred to the Committee of the Whole.

Motion carried.

By the Committee of the Whole:

Assembly Joint Resolution No. 2—Proposing to amend the Nevada Constitution to revise provisions governing the rate of the tax upon the net proceeds of minerals extracted in this State.

Assemblywoman Benitez-Thompson moved that the resolution be referred to the Committee of the Whole.

Motion carried.

Assemblywoman Benitez-Thompson moved the Assembly resolve itself into a Committee of the Whole for the purpose of considering Assembly Joint Resolution No. 1 and Senate Joint Resolution No. 1.

Motion carried.

COMMITTEE OF THE WHOLE IN SESSION

At 9:08 p.m.

Chair Frierson presiding.

Quorum present.

(REMARKS WILL BE INCLUDED IN THE FINAL JOURNAL.)

Chair Frierson announced if there were no objections, the Committee of the Whole would recess subject to the call of the Chair.

Motion carried.

Committee of the Whole in recess at 10:24 p.m.

COMMITTEE OF THE WHOLE IN SESSION

At 10:29 p.m.

Chair Frierson presiding.

Quorum present.

(REMARKS WILL BE INCLUDED IN THE FINAL JOURNAL.)

Assemblywoman Benitez-Thompson moved to do pass Senate Joint Resolution No. 1.

Motion carried.

Assemblywoman Benitez-Thompson moved to do pass Assembly Joint Resolution No. 1.

Motion carried.

Assemblywoman Benitez-Thompson moved to do pass Assembly Joint Resolution No. 2.

Motion carried.

On motion of Assemblywoman Benitez-Thompson, the Committee did rise and report back to the Assembly.

ASSEMBLY IN SESSION

At 12:57 a.m.

Mr. Speaker presiding.

Quorum present.

REPORTS OF COMMITTEES

Mr. Speaker:

Your Committee of the Whole, to which were referred Assembly Joint Resolutions Nos. 1, 2; Senate Joint Resolution No. 1, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

JASON FRIERSON, *Chair*

GENERAL FILE AND THIRD READING

Assembly Joint Resolution No. 1.

Resolution read.

Remarks by Assemblymen Titus, Benitez-Thompson, Hafen, Peters, and Frierson.

(REMARKS WILL BE INCLUDED IN THE FINAL JOURNAL.)

Roll call on Assembly Joint Resolution No. 1:

YEAS—29.

NAYS—Edwards, Ellison, Hafen, Hambrick, Hansen, Hardy, Kramer, Krasner, Leavitt, Roberts, Titus, Tolles, Wheeler—13.

Assembly Joint Resolution No. 1 having received a constitutional majority, Mr. Speaker declared it passed.

Resolution ordered transmitted to the Senate.

Assembly Joint Resolution No. 2.

Resolution read.

Remarks by Assemblywoman Carlton.

(REMARKS WILL BE INCLUDED IN THE FINAL JOURNAL.)

Roll call on Assembly Joint Resolution No. 2:

YEAS—29.

NAYS—Edwards, Ellison, Hafen, Hambrick, Hansen, Hardy, Kramer, Krasner, Leavitt, Roberts, Titus, Tolles, Wheeler—13.

Assembly Joint Resolution No. 2 having received a constitutional majority, Mr. Speaker declared it passed.

Resolution ordered transmitted to the Senate.

Senate Joint Resolution No. 1.

Resolution read.

Remarks by Assemblyman Edwards.

(REMARKS WILL BE INCLUDED IN THE FINAL JOURNAL.)

Roll call on Senate Joint Resolution No. 1:

YEAS—25.

NAYS—Carlton, Carrillo, Edwards, Ellison, Hafen, Hambrick, Hansen, Hardy, Kramer, Krasner, Leavitt, Neal, Roberts, Spiegel, Titus, Tolles, Wheeler—17.

Senate Joint Resolution No. 1 having received a constitutional majority, Mr. Speaker declared it passed.

Resolution ordered transmitted to the Senate.

REMARKS FROM THE FLOOR

Assemblywoman Benitez-Thompson moved that the Assembly adjourn until Monday, August 3, 2020, at 11 a.m.

Motion carried.

Assembly adjourned at 1:25 a.m.

Approved:

JASON FRIERSON
Speaker of the Assembly

Attest: SUSAN FURLONG
Chief Clerk of the Assembly